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REPORT

OF THE

TENTH ANNUAL MEETING

OF THE

AMERICAN BAR ASSOCIATION

HELD AT

SARATOGA SPRINGS, NEW YORK,

August 17th, 18th, and 19th, 1887.

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AT THE TENTH ANNUAL MEETING.

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C. C. BONNEY, ... Illinois.
JOHNSON T. PLATT, ... Connecticut.
R. F. LYON, ... Georgia.
J. R. JOHNSTON, ... Ohio.
HENRY C. PARSONS, ... Pennsylvania.
HENRY WISE GARNETT, ... District of Columbia.
JOHN S. BLANKMAN, ... District of Columbia.
CHARLES L. LAMBERTON, ... New York.
CHARLES BORCHERLING, ... New Jersey.
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JAMES L. ORR, ... South Carolina.
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E. F. BULLARD, ... New York.
E. S. YOUNG, ... Ohio.
WM. P. WELLS, ... Michigan.
EGBERT WHITTAKER, ... New York.
J. K. EDSALL, ... Illinois.

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Jacob Weart,	New Jersey.
R. D. Benedict,	New York.
Theo. S. Garnett,	Virginia.
John C. Haskell,	South Carolina.
Robert L. Morris,	Tennessee.
N. Van Slyck,	Rhode Island.
Thomas Dent,	Illinois.
Rufus King,	Ohio.
E. B. Sherman,	Illinois.
Walter George Smith,	Pennsylvania.
George B. Kulp,	Pennsylvania.
W. F. Willcox,	Connecticut.
Julius B. Curtis,	Connecticut.
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James O. Broadhead,	Missouri.
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Cortlandt Parker,	New Jersey.
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Samuel Wagner,	Pennsylvania.
George H. Bates,	Delaware.
Wm. H. Sims,	Mississippi.
E. B. Adams,	Missouri.
John T. Mason,	Maryland.
Skipwith Wilmer,	Maryland.
Charles T. Russell, Jr.,	Massachusetts.
John D. Taylor,	New York.
George Wm. Moore,	Michigan.
Shepard Barclay,	Missouri.
A. O. Bacon,	Georgia.
F. G. du Bignon,	Georgia.
W. W. Montgomery,	Georgia.

L. R. Smith, ... Alabama.
Frank H. Miller, ... Georgia.
Edward H. Stiles, ... Missouri.
Edwin S. Osborne, ... Pennsylvania.
J. W. Fellows, ... New Hampshire.
Charles L. Dobson, ... Missouri.
W. F. Sanders, ... Montana.
O. B. Potter, ... New York.
M. Arnold, ... Pennsylvania.
C. Stuart Patterson, ... Pennsylvania.
Elihu B. Taft, ... Vermont.
Eppa Hunton, ... Virginia.
Harvey B. Hurd, ... Illinois.
Herbert Boggs, ... New Jersey.
Alexander Grant, Jr., ... New Jersey.
Emile Rost, ... Louisiana.
Wm. Righter Fisher, ... Pennsylvania.
P. L. Mynatt, ... Georgia.
A. B. Olmstead, ... New York.
Wm. T. Newman, ... Georgia.
C. L. Bartlett, ... Georgia.
Hoke Smith, ... Georgia.
George R. Young, ... Ohio.
W. T. Houston, ... Louisiana.
F. A. Hall, ... Alabama.
R. E. Monaghan, ... Pennsylvania.
Orville R. Leonard, ... Nevada.
George Gray, ... Delaware.
D. S. Wade, ... Montana.
S. C. Shurtleff, ... Vermont.
W. W. Howe, ... Louisiana.
Thomas R. Hudd, ... Wisconsin.
Thomas J. Simmons, ... Georgia.
Alfred Hemenway, ... Massachusetts.
Charles W. Porter, ... Vermont.
H. P. Dillon, ... Kansas.
Edward J. Fox, ... Pennsylvania.
R. Wayne Parker, ... New Jersey.
A. Schoonmaker, ... New York.
F. N. Judson, ... Missouri.
Joseph K. Roberts, Jr., ... Maryland.
Wm. Allen Butler, Jr., ... New York.
George M. Gunn, ... Connecticut.
Austen G. Fox, ... New York.
Joseph P. Bedle, ... New Jersey.

W. S. CHISHOLM, ... Georgia.
NEWTON CHALKER, ... Ohio.
GUY C. NOBLE, ... Vermont.
J. FORD DORRANCE, ... Pennsylvania.
F. G. INGERSOLL, ... Minnesota.
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WILLARD SAULSBURY, JR., ... Delaware.
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BOYKIN WRIGHT, ... Georgia.
PETER ZUCKER, ... Ohio.
W. E. L. DILLAWAY, ... Massachusetts.
FRANK T. BROWNING, ... District of Columbia.
LINDEN KENT, ... District of Columbia.
C. S. BRADLEY, ... Rhode Island.
JOHN M. GLOVER, ... Missouri.
GEORGE S. NICHOLS, JR., ... New York.
MYER S. ISAACS, ... New York.
D. K. TENNEY, ... Illinois.
HENRY L. CLINTON, ... New York.
STEPHEN S. REMAK, ... Pennsylvania.

LIST OF DELEGATES.

GEORGIA.

F. G. du Bignon, ... Savannah.
P. W. Meldrim, ... Savannah.
Peyor L. Mynatt, ... Atlanta.
Hoke Smith, ... Atlanta.

KANSAS.

A. L. Redden, ... Eldorado.
W. W. Guthrie, ... Atchison.
T. A. Hurd, ... Leavenworth.

MICHIGAN.

George W. Moore, ... Detroit.

MISSOURI.

Henry Hitchcock, ... St. Louis.

MONTANA TERRITORY.

Wilbur F. Sanders, ... Helena.
Edwin W. Toole, ... Helena.
Decius S. Wade, ... Helena.

SOUTH CAROLINA.

James L. Orr, ... Greenville.

TENNESSEE.

W. C. Folkes, ... Memphis.
Robert L. Morris, ... Nashville.
Xenophon Wheeler, ... Chattanooga.

quorum for the transaction of business, and we have authority to proceed and fill the vacancies in this Committee, but we have felt unwilling to take either of those courses and have preferred rather to submit to you in the form which we have prepared the matter of filling the Executive Committee for present action. We were unwilling, after his long and faithful service, to treat the office of Professor Baldwin as vacated by his absence in Europe, where he and Mr. Rawle, with our former President, Mr. Phelps, and Mr. Field, Judge Peabody, and perhaps some others, have been in attendance upon the International Law Association. We were unwilling to seem to forestall the action of the Association in reference to the filling of the vacancy created by Judge Poland's death. We invited our President to act with us, as he did on yesterday, and the result was an agreement to submit to you the following proposed amendment to the Constitution:

Art. III.

Strike out all following the words, "Executive Committee," and insert the following: "Which shall consist of the President, the last ex-President, the Secretary, and the Treasurer, all of whom shall be *ex officio* members, together with three other members to be chosen by the Association, and the President, and in his absence the ex-President, shall be the Chairman of the Committee."

As a member of the Executive Committee, I may say that we have felt that heretofore the Executive Committee has been too permanent a body, and that it ought to have introduced into it some members of the Association who would be changed from year to year, lest there should be too much tendency on the part of the Committee to act according to set notions. It seemed to us, therefore, that to pursue the usual course of making the President of the body *ex officio* chairman of the Executive Committee was wise, and that to add to him the retiring President, so that the Executive Committee would

have the aid of their counsel and experience, would be perhaps the best practical arrangement.

If it shall be your pleasure to accept this action which we propose, our President and the ex-President, Mr. William Allen Butler, of New York, will immediately enter upon their duties as members of your Executive Committee.

In this connection another matter has been called to our attention, in regard to which we offer a slight amendment. It has seemed to us that it would be a becoming courtesy to make the ex-Presidents of this body honorary members of it; we therefore recommend the adoption of the following amendment to Article IV; add the following words:

"All ex-Presidents shall be enrolled as honorary members."

Mr. President, we submit this matter to the Association for its action.

The President:

The proposition is open for debate if any gentleman desires to address the Association. If not, we will take up the first proposition, which is the one in reference to the Executive Committee. Article III now reads as follows: "The following officers shall be elected at each annual meeting for the year ensuing: A President (the same person shall not be elected President two years in succession), one Vice-President from each State, a Secretary, a Treasurer, a Council, consisting of one member from each State (the Council shall be a standing committee on nominations for office), an Executive Committee, to be composed of the Secretary and Treasurer, together with three members to be chosen by the Association, one of whom shall be chairman of the Committee." Now, the proposed amendment is as follows: Strike out all following the words "Executive Committee," and insert the following, "which shall consist of the President, the last ex-President, the Secretary, and the Treasurer, all of whom shall be *ex officio* members, together with three other mem-

bers to be chosen by the Association; and the President, and in his absence the ex-President, shall be chairman of the Committee."

The amendment was then adopted.

The President:

The next amendment to the Constitution is Article IV. Append the following words:

"All ex-Presidents shall be enrolled as honorary members."

Skipwith Wilmer, of Maryland:

I would ask, Mr. President, that that lay on the table temporarily. I am sure, sir, that I feel as deeply as any one the debt which we owe to our ex-Presidents, but we meet here without any distinction in class, and the idea of creating a class of honorary members, which may be increased hereafter by the addition of gentlemen who have not served, is a matter that might be very properly considered with some deliberation by the Association. I think it a wise thing, therefore, to let that rest until we can consider it a little more fully than we would be able to do this morning.

I therefore move you, sir, that this second amendment lay on the table temporarily, to be taken up at any time when the Association is ready to take it up and consider it.

Robert D. Benedict, of New York:

I second it.

Carried.

The President:

The next business in order is the nomination and election of members.

George G. Wright, of Iowa:

Mr. President and gentlemen of the Association, as Chairman of the General Council I am instructed to present for membership the following names:

(*See List of Members elected, at the end of the Minutes of the Proceedings.*)

Walter George Smith, of Pennsylvania:

I see that the next business on the programme is the election of the General Council. Before that is done I move that a recess of ten minutes be taken to enable the gentlemen present to decide upon the members of the General Council from their States.

Rufus King, of Ohio:

I second that motion.

Carried.

(A recess was then taken for ten minutes.)

AFTER RECESS.

The President:

The names of the States will be called by the Secretary, and then gentlemen will announce the names of the General Council.

The Secretary:

Mr. President, by the Constitution we have certain delegates who are entitled to membership here, and it seems to me that before the call of the Council it would be right that we should know who are delegates here, and if it would be in order, sir, I proceed to read: We have from Michigan, George W. Moore; from Tennessee, W. C. Folkes, Robert L. Morris, and X. Wheeler; from Georgia, Hoke Smith; from Kansas, A. L. Redden. These gentlemen have the same rights as other members in the meeting. It may be that there are in some cases no members present except the delegates—they have the same rights as other members.

The President:

Now, Mr. Secretary, call the list of States.

The General Council was then elected.

Walter George Smith:

On behalf on Francis Rawle, who is absent, I desire to submit the Treasurer's report.

(*See the Report at the end of the Minutes.*)

The report was received and approved and ordered printed.

The Association adjourned to 8 o'clock P. M.

EVENING SESSION.

The President:

The Association will come to order. The first business this evening is the report from the Secretary.

The Secretary:

Before I proceed with my report, Mr. President, there is a matter that ought to precede that. We have James L. Orr present at this meeting as a delegate from South Carolina.

Mr. President, this Association now has seven hundred and forty members. The recapitulation of the whole number is on page 150 of the Annual Report, showing thirty-seven States and two Territories, Colorado being the only State not represented in our membership.

Several matters were referred to committees at the last meeting, the list of business of which will be found on page 551. We may expect to hear from the Committee of Jurisprudence and Law Reform about the approbation of the bill introduced in the United States Senate by Senator Cockrill, providing for the appointment of a commission to prepare a Federal code of procedure, recommended strongly by Mr. Justice Miller, of the United States Supreme Court, or any bill having a similar object in view.

We may expect to hear from the Committee on Judicial Administration and Remedial Procedure in regard to a resolution referred to it, presented by Mr. Borcherling, of New Jersey, last year, which reads thus: "That this Association recommends to Congress the passage of an act creating a penal colony of the United States, and to which each of the

States and Territories of the United States shall have the right and power to convey all such criminals as may have been convicted twice, and whose sentence shall be not less on the second conviction than five years' penal service."

A resolution of Mr. Willis, of New York, referred to the Committee on Publication, in regard to the printing a report of the Committee on Delay and Uncertainty, met with the response from the Committee that they thought it not advisable to print anything more on that subject, as very much had already been printed.

A resolution of Mr. Earle, of the District of Columbia, relating to the relief of Congress from the necessity of private legislation, was referred to a committee of five, of which committee Mr. Earle was the Chairman.

A resolution of Mr. Bonney, of Illinois, relating to uniformity of practice in the United States, with a draft of proposed bill, was referred to the Committee on Judicial Administration and Remedial Procedure; also a draft of proposed bill to regulate inter-State debts and collections under the power to regulate commerce among the several States, was referred to the Committee on Commercial Law; also a draft for a proposed bill for courts of arbitration of the United States, which was referred to the Committee on Jurisprudence and Law Reform.

A resolution of Mr. Wagner, of Pennsylvania, relating to a national bankrupt law, referred to the Committee on Commercial Law.

A resolution of Mr. Green, of Ohio, referred to the Committee on Jurisprudence and Law Reform, relating to the publication and sale of State reports. Those matters are expected to come before this meeting by the reports of the various committees.

The usual programme of the proceedings has been printed, and is in the hands of the members.

At every meeting of the Association large numbers of members do not register—probably through mere neglect—but

I take the greatest pain to endeavor to persuade them to do so. The register is on the table here during the meetings of the Association, and it is at our reception-room in the Grand Union Hotel at other times. The newly elected members are particularly requested to register. All, indeed, ought to do so for the various uses which flow from that registry. We desire to know where gentlemen are and if they are in the city, and there are other matters to which I desire to give answer if I have the opportunity. I, therefore, again say that it is very desirable that gentlemen should all register. I hope that no one will neglect it.

Gentlemen are particularly requested to use the reception-room at the Grand Union Hotel for the purpose of becoming acquainted with each other, and indulging in such conversation as pleases them. That is one of the uses of the Association.

That is the end of my report, Mr. President.

The President:

The next business in order is a paper to be read by Henry Jackson, of Georgia, on "Indemnity the Essence of Insurance; Evil Consequences of Legislation Qualifying this Principle." I introduce to the Association Mr. Jackson, who will now present this paper.

Mr. Jackson then read his paper.

(*See Appendix.*)

George G. Wright, of Iowa:

The General Council had a meeting at half-past seven o'clock and agreed upon a number of recommendations for membership in the Association. The list had not been prepared at the time of assembling this evening, and, therefore, could not be announced then. It is now prepared and the Secretary will be good enough to read the list agreed upon by the General Council of the names we recommend for membership.

The Secretary:

Mr. President, we have the pleasure of presenting forty-one new members.

The list was read and all were elected.

(*See List of Members elected at the end of the Minutes.*)

The President:

There being no discussion as to the paper read by Mr. Jackson, the next business in order is the discussion on the report made in 1886 by the Committee on Judicial Administration, as to indeterminate sentences for convicted criminals. I would request gentlemen at this point when they address the Chair to please state their names and the State from which they come so as to avoid confusion.

Robert D. Benedict, of New York:

The resolution, Mr. President, which was offered last year by the Committee and was laid over for action until this present meeting is brief, and I will read it:

"*Resolved*, That in the judgment of this Association the system of liberating convicts on parole requires better safeguards than those which are provided by the legislation in the States of New York and Ohio on that subject, so as to secure the retention of paroled prisoners more effectually within the supervision and control of the prison authorities, and keeping them strictly within the limits of their respective States. The dispersion of criminals by the authorities of a State in other States or countries should never be permitted."

This appears on page 318 of the proceedings of last year.

I desire to state in relation to this matter that, as was seen by the address of the President this morning, two other States have passed laws in relation to this matter during the past year. The provisions of those laws, however, have not been brought to the attention of the Committee, and we were not able to make any change in our recommendation by reason of that legislation. Our report, as you see, refers simply to the legislation of New York and Ohio. I understand from my colleague, Mr. King, of Ohio, that some objection was urged on behalf of the authorities of Ohio to what was said in our report in relation to the situation of things there as not being as well guarded even as it is in the

State of New York. The law in relation to both States on that point was substantially the same—namely, that this paroling of prisoners was to be such as to keep them within the control of the prison authorities, and that it was to be done under rules and regulations adopted by the prison authorities. And it would seem that the rules and regulations which were adopted by the State of Ohio did cover this very point which we pointed to in our resolution—namely, the dispersion of criminals from one State into other States, for the parole which was given in the State of Ohio always contained in it the clause that the criminal was not to go beyond the limits of the State, and, of course, if he did go, it was an escape from justice, and he might be pursued and restored by the ordinary method of judicial procedure. But, as the members of the Association will see, that, after all, was a matter of regulation and not a matter of law. Our recommendation is that it should be made more closely a matter of law, because under the same wording of the statute in the two States, in Ohio by a regulation they confine their parole prisoners within the limits of the State, and in New York they do not. And the fact remains, as was stated in our report, that out of the one thousand two hundred and fifty prisoners who have been paroled in the State of New York two hundred and fifty-four have been dispersed among other States and countries than the State of New York. The Committee still adhere to the expression of their opinion that it is a thing that ought to be guarded against, and ought to be guarded against by law, and on that account I move the adoption of the resolution of the Committee.

The President:

The resolution is open for debate, gentlemen.

Augustus O. Bacon, of Georgia:

I am not prepared to debate this question, nor am I prepared to give a satisfactory vote upon it. It is a subject, I presume, which has met with investigation at the hands of the Committee satisfactory to themselves, and the only object

I have in rising is this: It appears to me to be a matter very largely of local interest, and I do not think it has been a custom of this Association to make recommendations to particular States as to statutes which they should pass. We are here representing thirty-eight States, and we are supposed to deal only with subjects of general interest and of general application to those things which concern the administration of the law in our various States. Now, if forced to vote upon this subject, I will be compelled to vote in the negative, simply because that is the safe course when one is not furnished with sufficient information to enable him to vote with the affirmative; and the only object I have in addressing the Chair is to call the attention of the Association to this feature of the case. If it is a matter of local interest, it does not appear to me to be a proper subject for action by this Association. There is but one feature, so far as I was able to gather from the remark of the gentleman who offered the resolution, which has any interest outside of the particular State in which the registration was recommended, and that is the feature alluded to of the fact of the dispersion of some of these criminals outside of the State in which this legislation is desired. If the matter of prison regulation is to be gone into at all it strikes me that this is an extremely limited view to take of the matter. The matter of prison regulation is a very vast subject. It is one in which there can be, undoubtedly, very great reform, very great improvements—one which, doubtless, needs very great reforms and improvements. But, sir, it does not appear to me to be the proper province of this Association to single out one isolated feature of prison regulation which, so far as we have any information, is limited to two or three States; and for us, a high representative body (at least we so appear to this nation), upon this slight information, to be giving our solemn judgment and our solemn advice to the State of New York as to what she should do,—for one, Mr. President, I am not prepared to do it. I repeat, I do not rise for the purposes of

discussing the merits of the resolution, because I have not the information which would enable me properly so to do. I cannot give any information to this Association. But it does occur to me that we are overstepping the bounds if we endeavor to utter our solemn conviction upon a subject upon which we have not had the proper light; and I think, further, that we will be, to a certain extent, depreciating the high functions which we should perform when we assume to go into the various States and examine into their specific legislation, and, upon the slightest of information, assume to give them advice as to what particular legislation may be needed in their case. Now, sir, while I am not prepared to say but what it may be a proper resolution, I must still vote in the negative.

Rufus King, of Ohio:

I should be very sorry, indeed, if the gentleman should vote under a misapprehension. The resolution does not propose to give advice to the State of New York at all. It is a general subject referred to this Committee two years ago, and which is now becoming very important to all the States, as will appear by the fact stated by Mr. Benedict just now, that since this report was filed two States have adopted this system, and before the next session half a dozen other States will have adopted the same course.

What are called indeterminate sentences have been adopted in only two of our States, and the meaning of them is this: That the judges, instead of fixing the limit of punishment, can make the sentence general. The convict is sentenced to the penitentiary without a time being fixed, the object being to give the prison authorities the power to fix his length of stay in the prison. The parole system is supplementary. We all see how that system works in New York, where criminals under parole constantly dispersed into other States. Now, what the Committee complain of in this resolution is, that as New York has been made the dumping ground for criminals from Europe, she in turn has been dumping her

criminals upon her sister States. The prisons in which this system is adopted grade their prisoners into three classes. A convict goes into class No. 2. If he behaves himself, and gets no black mark, he is promoted after one year into class No. 3. If he misbehaves himself, he is put down into class No. 1. The inducement, therefore, to the criminal is to improve himself by good conduct. In Ohio, if he reaches the third class, and has served the minimum term which the statute has prescribed for the particular crime for which he is sent to the penitentiary, he is then said to be eligible for parole; that is to say, if the prosecutor of the county will certify that the prisoner is a man of such and such character, and that this is his first offense, he can then be paroled. If the criminal can then secure a responsible person to say that he will employ him at wages and will be responsible for his good conduct, the criminal is then intrusted to his care to labor under the supervision of this man, not to depart from this man's employ, or go away without the permission of the prison authorities, and to report once every month precisely what he is doing, how much he has made during the last month, and generally what his situation is.

The result is this: It has freed the State of Ohio to a very great extent of the difficulty in regard to prison labor. Secondly, as a process of corrective punishment, it is undoubtedly far in advance of anything yet devised, as any man can see at once. The difference between the man who has been allowed to go out upon this system of parole and work himself into a good position in life, and that of the convict who has served his time and then is turned out of prison, not knowing where under God's heavens he is to go, is very apparent. The object of the parole system is to relieve the prisoner from this condition of helplessness, and induce him by good conduct and the hope of pardon into a decent position.

Now, then, I come back—sorry for having taken so much time. The Committee do not recommend the State of New York to change their statute, but they say;

"*Resolved*, That in the judgment of this Association the system of liberating convicts on parole requires better safeguards than those which are provided by the legislation in the States of New York and Ohio on that subject, so as to secure the retention of paroled prisoners more effectually within the supervision and control of the prison authorities, and keeping them strictly within the limits of their respective States. The dispersion of criminals by the authorities of a State in other States or countries should never be permitted."

We do not undertake to dictate. I am, like the gentleman from Georgia, somewhat of a State-rights man, and I should not pretend to dictate to Georgia or any other State about that; but we simply say it is the opinion of this Association that this thing is not right, and our advice is not to leave the law open to such abuse as this statute seems to have been perverted to in New York.

It is not necessary to trouble the Association further, or I would read the table, from which you would be surprised to see the extent to which this abuse has gone. There is an Ohio judge in the room now who has sent to the Ohio penitentiary two of these New York parole men in the past year.

Henry Wise Garnett, of the District of Columbia:

In pursuing the line in which Mr. King has just spoken I think it right that the Association should hear the resolution under which we acted. In 1886 the following resolution was introduced, and it is the one under which the Committee acted:

"That the Committee on Judicial Administration and Remedial Procedure be instructed to inquire into the subject of indeterminate sentences of convicted criminals and to report to this Association at its next session the extent to which the practice of such sentences has been adopted, if at all, with their recommendations upon the subject."

Now, I submit that this is certainly a general resolution, to single out no particular State—

Augustus O. Bacon:

Will the gentleman permit me to ask him a question?

Henry Wise Garnett:

Certainly, sir.

Augustus O. Bacon:

Were the statutes of the different States examined?

Henry Wise Garnett:

Now, sir, I turn to the report of the Committee in 1886. The report begins at page 313 and runs to page 318. I don't propose to read it all. The Committee reports this in answer to the question which the gentleman just asked: "This practice, so far as the Committee can ascertain, has been adopted in the States of New York and Ohio only. As the Ohio statute has been—"

Augustus O. Bacon:

I just beg the gentleman will give us specific information whether or not the statutes of the different States were examined.

Henry Wise Garnett:

They were, so far as we could examine them.

Augustus O. Bacon:

Did you examine them?

Henry Wise Garnett:

I cannot state whether we commenced with Maine and went to California. I know we procured all the statutes we could. We had a year to examine them. We did make the examination, and the result that we came to is this: That we only found it in two States. Since then it has been adopted by two more. After the year's research, after the communication with each other, and after meeting and deliberating with each other on this subject, we had only this information. If the gentleman has any other I would be happy to receive it. We, therefore, prepared and offered this resolution, which was laid over. Now, we picked out those States because they were all we could find. We had no desire to reflect on New York or Ohio. Mr. Benedict is from

New York and Mr. King from Ohio. We certainly did not desire to give them any bad prominence. I do not know but that the dispersion of criminals in other States might have been effected in some other manner. I have heard of a practice formerly in the State of Virginia of a whipping-post—which subject of the whipping-post, by the way, is to come up for discussion here. It has now been abolished in that State. They had an old justice of Alexandria who, we people in the District of Columbia were informed, had a practice when a man was sentenced to thirty lashes of only giving him fifteen, and discharging him with the admonition to come back the next week and get the other fifteen. The result was the man generally landed in the District of Columbia before night. So there may be other ways of dispersing criminals besides this. We endeavored, however, to find this method in other States, and we reported that these were the only States in which we found it, and as we were directed to make a recommendation, this is the recommendation that we made.

Julius B. Curtis, of Connecticut:

Mr. President, it has been said here in the recommendation of this Committee that this system which has been adopted in Ohio and in New York has also been adopted in two other States. I suppose they are the States to which the President alluded in his address, namely, Connecticut and Massachusetts. So far as Connecticut is concerned, I wish to say that they have adopted no such system. It was Professor Baldwin's idea of putting the mark of Cain upon prisoners who had been convicted twice and sentenced to State Prison which was adopted in Connecticut. It is not the parole system at all. When a man has been convicted twice and sent to prison he is to stay there forever. He cannot get away. It does not contemplate the Ohio system. It is a plan which in my opinion ought to be taken up and discussed by all the States and by all the civilized communities of the world.

The President:

The question is now on the adoption of the resolution. All those who are in favor of its adoption will say aye.

Carried.

The President:

There being no other business before the Association, the meeting will stand adjourned until to-morrow morning at ten o'clock.

SECOND DAY.

Thursday, August 18, 1887, 10 *A. M.*

The President:

The Association will please come to order.

George G. Wright, Chairman of General Council, presented the names of two candidates for membership, who were elected.

(*See List of Members Elected, at the end of the Minutes.*)

The Secretary:

Mr. President, Mr. Wade also comes as a delegate from the Montana Bar Association. Mr. Henry Hitchcock represents Missouri as a delegate.

I have endeavored for some time past to collect names of the Presidents and Secretaries of the several State and local Bar Associations. If gentlemen present will be kind enough to hand them in to the Assistant Secretary at the table, I will have them printed in our next report. It is a means of diffusing information that may be useful.

John F. Dillon, of New York:

Since yesterday Mr. W. W. Guthrie, a delegate from the State Bar of Kansas, has attended and is now present. I simply rise to make mention of the fact.

The President:

The business now in order is the delivery of the annual address. I introduce Mr. Henry Hitchcock.

The address was then read.

(*See Appendix.*)

The President:

The next business in order consists of the reports from standing committees. The first committee of the list is the Committee on Jurisprudence and Law Reform.

Henry Hitchcock, of Missouri:

In the absence of Mr. Baldwin, the Chairman of the Committee, I have been requested by him to present the report. These subjects were referred to the Committee: A resolution referring to a Federal Code of Procedure; a resolution concerning the publication of State Reports, and a resolution referring to Federal Courts of Arbitration. The report of the Committee on these subjects I have in my hand for presentation.

Mr. Hitchcock then read the report of the Committee on Jurisprudence and Law Reform concerning a Federal Code of Procedure.

(*See Appendix.*)

Mr. Hitchcock then read the report of the Committee on Jurisprudence and Law Reform concerning the publication of State Reports.

(*See Appendix.*)

Mr. Hitchcock then read the report of the Committee on Jurisprudence and Law Reform on Federal Courts of Arbitration.

(*See Appendix.*)

The President:

These reports having now been read, they are subject to the action of the Association.

Rufus King, of Ohio:

The first report presented by the Committee happens to be one upon the same subject which was referred last year to the Committee on Judicial Administration. They have a report very much like this, and I move, for the present, that the first report submitted by Mr. Hitchcock be laid upon the table temporarily.

Wilbur F. Sanders, of Montana:

I second that motion.

The President:

You mean, Mr. King, the report which concludes with the following resolution:

Resolved, That in the opinion of this Association the preparation of a code or codes of procedure for the United States Courts, regulating both civil and criminal proceedings, is both desirable and practicable.

Rufus King:

Yes, sir.

The motion was adopted.

The President:

The next report is accompanied by the following resolution:

Resolved, That in the opinion of this Association the project of a bill for an Act to establish courts of arbitration, as printed in the reports of the Association, Vol. IX, p. 509, presents a fair and practicable scheme for enlarging the powers of the courts of the United States in respect to arbitration, and is worthy of careful consideration by the Congress of the United States at its next session.

C. C. Bonney, of Illinois:

I move the adoption of that resolution.

G. A. Breaux, of Louisiana:

One moment. I desire to state that having had some experience upon the question of arbitration in the State in which I practice my profession, we find that arbitration usually means the confiding of interests to a tribunal less competent to pass upon the rights of parties than would be the case if intrusted to the usual judicial tribunal. Its administration has been a source of increased difficulty. It has increased litigation with us. Why a tribunal of arbitration should be selected to confide rights to, which is less competent both by its organization and by its learning and ability to deal with judicial questions, I never could understand.

When I have dealt with an arbitration proceeding, I have usually found that one man has taken a view favorable to one party; the other man has taken a view favorable to the opposing party; then they have called in a third party, who has divided the differences between the two without regard to the real rights of either of the parties. For that reason I question very much whether an arbitration is a desirable tribunal to intrust any rights to. My own judgment about it is that rather than create new tribunals for decisions of popular questions now arising that it would be better to enlarge the judicial tribunals of the United States or States. As lawyers, we all know that the larger experience the judges have, the better judges, as a rule, they make. A man who enters upon the discharge of judicial duties has his schooling to qualify himself to strike at that which would be equal justice between man and man; and it is important that he should have such schooling. Now, I say that if you enlarge the powers of a man so trained you are benefiting the parties whose interests are to come before him. You are securing for them the possibility of more perfect rights. For these reasons I question very much the propriety of suggesting upon the authority of this Association, the creation of a new tribunal, and, as at present informed, I feel in duty bound to vote against this suggestion.

C. C. Bonney:

I rise to a word of explanation, which I think will remove the difficulties under which my friend evidently labors. There is throughout the United States at this time, and has been for a year or two, a widespread demand for the privileges of arbitration. We thought it reasonable that that demand should be met. The bill in question has one feature not known, so far as we are advised, to any other method of arbitration which has been attempted in this country. It meets the exact difficulty pointed out by our learned brother. It provides that the courts of the United States shall appoint some fair person to be called a judge arbitrator, and who,

being trained in the law, shall be the guide of the arbitrators. Some think that the reason why arbitration has not been successful heretofore is because there was no such guide.

Wilbur F. Sanders, of Montana:

I would like to inquire of the gentleman wherein this arbitration will differ from trials in courts of law if the arbitrators shall be competent men. Will the arbitrators be guided in the reception of evidence and proof by those rules of evidence which obtain in courts of law; and in their determination of the controversy, will they be governed by those rules of law which are ethics formulated in words?

C. C. Bonney:

Again I rise to answer the question proposed by the gentleman from Montana. The bill is so drawn as to invite those powerful and not always orderly combinations of capital and labor which now prevail so widely thoughout the country to submit their grievances to a decision by arbitration, whereas they would not, and, in the present state of the law in some cases, could not have these questions determined in a court ot law. The bill was framed to invite associations such as are common in all parts of the Union to submit the controversies which they have to arbitration, and it was thought that they would be more likely to do so if they could have the aid of a guide appointed in the manner provided by the proposed bill.

Wilbur F. Sanders:

My own observation of this demand for arbitration is that it comes from people who desire that the tribunal constituting them shall be emancipated from rules of law. Now, until I am willing to vote a want of confidence in the adequacy of the law to right every wrong, I am not willing to say that there is a better tribunal known among men than the judicial tribunals themselves. Further than that, the resolution which is here offered for our adoption refers to a discussion of the question found on page 500 of Volume IX, of our proceedings, and Section 2 of the Act provides that "any person or persons

acting as individuals, and any association, society, or organization, whether incorporated or not, or the officers, or the governing committee or authority of any such body, etc.," may submit to arbitration. Now, I do not understand that there is any reason why two men, or two bodies of men who differ, may not select an individual between them to determine what is the exact right about the matter. I am unwilling, for one, that the American Bar Association shall commit itself to the proposition that the officers of a corporation who are but trustees representing somebody else's property, whenever a contention shall arise, shall withdraw the very right of that controversy from the tribunals of the law and submit it to a tribunal that is emancipated from the rules of law.

E. B. Sherman, of Illinois:

Mr. President, that man must be blind indeed who has not discovered within the last five years the powerful working of social forces never before perceived in American society. The universal organization among the workingmen, the brawn and the muscle of this country, has engaged the attention of all thoughtful men. I do not exaggerate, Mr. President, when I say that the problem of the future in this country is, how shall we settle the complicated and perplexing controversies which have arisen and which now exist between capital and labor? Gentlemen assure us that existing judicial tribunals with jurisdiction as now exercised are adequate to meet this emergency. Certainly, the principles which underlie jurisprudence are sufficient in theory, at least, to adjust any existing controversy between individuals or classes. But that judicial tribunals, as at present constituted in this country, are competent to deal with these social questions, these sharp conflicts between labor and capital, which are threatening, not only the prosperity, but perhaps, to some extent, the disintegration of existing institutions, is certainly incorrect. While it would be unwise to modify essentially either the principles or the modes of administering our jurisprudence as it has existed and now exists, it is the part of wisdom not only to

recognize existing evils, not only to apprehend existing conditions, but to provide a remedy for those evils, and tribunals suitable to meet the emergencies which are now arising. We have had some instructive experience in Chicago this season. There was a general strike on the part of masons and carpenters and other similar associations. The pretext was a very feeble one, but the real trouble between contractors and workingmen organized on both sides, was a disagreement regarding the rights of the laborer. The result has been that building in Chicago during 1887 has not been twenty per cent. of what it would have been had these difficulties not existed. Thousands of contracts have been abandoned, millions of dollars have remained unemployed, and widespread disaster has been brought upon the laboring classes. After this had existed for several months we had an illustration of the virtues of arbitration in such matters. Judge Tuley, one of the Chancellors of the Superior Court of Cook County, by mutual request acted as judge arbitrator between the two contending parties, and, aided by a man chosen by each side, the Chancellor, clothed with equity and possessed of a good conscience, settled and fixed the rights and obligations of the parties, and conferred upon the parties an inestimable boon, especially upon the laboring class suffering by enforced idleness. Why may not this method of setting controversies be crystallized into a law of this nature? Are there not indications that some tribunal of this character must be created to meet the exigencies of the present time?

Orlando B. Potter, of New York:

Mr. President, I confess that I sympathize very deeply with the sentiment of the resolution. But if we are to do anything in this direction it should be toward enlarging the powers of the court. I fear that taking the other course, on the recommendation of the American Bar Association, will be taken as an equivalent to an admission that the courts of this land, clothed with proper powers, are not adequate to settle all controversies. I have had some experience during

the last ten years as a considerable builder on my own account with these questions, and the suggestions made upon my right (Mr. Sanders') that it is always competent for parties having a controversy to call in any individual in whom they have confidence is right, and to carry out the determination thus made meets entirely my approval. If the purpose is to substitute the decision of an arbitrator in whom both parties have confidence for the decision of a court and enable the parties always to dispose of a question without going before it, it seems to me it fully covers the ground, but if more be necessary, if it be necessary to enlarge the jurisdictions of the court in order that they may be advised by competent advisers of the two parties, why, it seems to me it should be done in that direction rather than by creating a new tribunal or by an expression of this Association that we have to make some new court to meet this new class of cases. As a rule, these questions will always disappear and settle themselves if there is a right spirit manifested by both parties, if the real purpose is an honest settlement rather than a prolonged litigation or a noise over the country. Then, in my opinion, a decision will be reached. I have found it so in more than half a dozen cases that have arisen in my own experience during the last five years where parties have threatened to stop my building operations, and have actually done so; but upon mutual understanding opposition has at once disappeared, and there has been found nothing to quarrel about.

D. S. Troy, of Alabama:

I doubt, Mr. President, very much whether the creation of a court of arbitration will remove the evils that result from the conflict of capital and labor. It seems to me that something deeper than that must be done, that some device must be hit upon by which capital and labor may be placed in partnership; in other words, labor should be allowed to share in the profits of the business in which labor and capital are jointly engaged. But the question of arbitration will do some good in that direction. It is a step in the right direc-

tion. But aside from that, Mr. President, I think that the power of arbitration ought to become a part of the jurisdiction of the courts of the United States, of the jurisprudence of the United States, so to speak. We have in Alabama a statute authorizing arbitration in which the arbitrators are not sworn to try the matter in dispute according to the law and the evidence at all, but they are required to take an oath that they will hear the parties and the evidence and decide the cause according to the manifest justice and equity of the same. That, I think, relieves them from all the obligations of legal and equitable rules, legal proceedings, and equitable proceedings. They have no regard to anything that has gone before, nor have they any regard for anything in the future. They are absolutely cut loose from everything except to do right between these two disputants. Occasionally, at long intervals, it is true, but once in a while, a case comes along where nothing else in the world will fit. In the course of my practice in Alabama, I have on three or four occasions been engaged in controversies where there was no tribunal that would meet the want of the disputants like that arbitration would. There was an honest difference between the disputants on matters of law or fact. Sometimes it is one and sometimes the other, but generally on matters of facts, where nothing in the world but that sort of a tribunal would fully meet the demand, and in that class of cases it has been used with very great benefit, and I think by putting in that drop of a jurisprudence, that has gone on successively in another country for two or three thousand years into our jurisprudence, and giving the people the right to use it if they see proper, will do good. It is a move in the right direction. The affairs of mankind are not like those of the Creator, but they are one continued variation, while the rules of law and the rules of equity proceedings, the principles of law and the principles of equity, are more or less straight level. They are made by man, like the railroad, and it is impossible that those rules should be laid down so as to fit all possible cases

that naturally arise between man and man. And it is the wholesome principle that we should embody into the jurisdiction of the United States, as we have into the jurisdiction of, I suppose, every State in the Union, this principle, this right conferred upon disputants to go before a tribunal in which the rules of law and the rules of equity will be thrust aside, and in which they will set up three Mandarins, as the Chinese would call them, who will adjudge the differences and give the sanction of law to the judgment then rendered.

Charles C. Lancaster, of the District of Columbia:

Mr. President, I cannot refrain from entering my strong protest against such an unusual proposition from a body of lawyers as is attempted here in this resolution. The idea of a body of lawyers admitting that the courts of the country and the legal profession are inadequate and unable to settle the controversies of the land is an unjust reflection. What does an arbitration mean? It means nothing less than a settlement of legal controversies among laymen and by laymen. It very seldom occurs, I think, that any arbitration is settled by lawyers. When a merchant has a controversy with another merchant do they call in lawyers as arbitrators? No, they want to get away from lawyers or they would go to the courts. Now, Mr. President, for this body, a representative body of the legal fraternity of this country, assembled as we are, to acknowledge that we are unable, as lawyers, to meet the demands of the people, I think is an astounding confession of weakness. I think we ought to repudiate that idea, that we ought to stamp it out here to-day. We are organized for the purpose of meeting the evils under which the courts and the profession are laboring; we are here for the purpose of rising up to the occasion; we are progressive and are not following the example of laymen, of men who are non-professional; we are not here to admit that we think it is very advisable when any of our clients have a legal proposition not to come to my office or to your office, but to go down here to a locksmith and a jeweler and get them to settle

the proposition! Now, that is pretty much the proposition here. We know that the learned professions to-day are suffering, as it were, from that very thing. Why? Because laymen go into the court and find they cannot get a judgment or decision in perhaps some twelve to eighteen months. Now, that is a weakness of the profession. That is a difficulty that we are here to contend with, not to go on and admit our weakness and say we favor arbitration and think we are unable to cope with the legal difficulties of the times.

R. Wayne Parker, of New Jersey:

Mr. President, where parties want to arbitrate, where they admit there is an honest dispute on both sides, where they are willing to leave the settlement and practically the compromise of that dispute to some one man, so as to avoid difference between friends, whether they be employer or employed, arbitration exists. It can be used always. It is a method of avoiding the law. But where arbitration is ever provided—*provided*—I have never known it anything but a failure. Where you try by law or by arrangement to settle beforehand that what difficulties shall arise shall be submitted to arbitration, you have nothing; the selection of a man trusted by each you do not have, but instead you have two men distrusted by each party, and a third man that neither trust. You have, instead of trials by rule, trial without rule; either no trial and neglect, or else the most tremendous delays that ever afflicted justice—adjournment from day to day, from week to week, and month to month. I have seen them and been there. Instead of rules of evidence and law you have a decision that is, without appeal, and you have to submit to it. Now, no law that can be passed can provide that arbitration be compulsory. That is admitted. I don't know what this law is, and that is one reason I am going to vote against it—it has not been made plain here—but when they talk about arbitration for capital and labor, I know what the proposition has been. It has been the proposition on behalf of certain people in this country that all employ-

ments shall have in the contract an agreement to submit all questions between employer and employee to arbitration. That means that the honest, just man agrees that, no matter what demand is made upon him, he shall submit it to a court of arbitration, the disposition of which court is always to compromise and grant part of that demand. I have seen many an employer and employee; where they believe they were right they won't arbitrate, and they won't agree beforehand to arbitration, and I don't think we should pass a resolution which says morally they ought to. That is a question between man and man, whether he is right in each particular case, and if this law means that, I am against it.

George H. Bates, of Delaware:

Mr. President, it seems to me that there are two distinct and separate subject-matters that are wrapped up in this debate, and as it is going on now it must be to a certain extent inconclusive. Now, the suggestion that has been made here that by proposing to introduce into a Federal court the principle of arbitration or the principle of referee trials, which is a part of the jurisprudence of almost every State, is a reflection either upon the courts or upon the bar, it seems to me is hardly worthy of our serious consideration. We are not posing as members of the bar of the various States who have reached that degree of perfectness that we are ready to be translated. The very name of this Association and those who are members of it indicates that this Association is founded on the idea that there may be improvements in the administration of the law. Therefore any proposition which looks to improvement, whether it be in fact an improvement or not, certainly is not to be construed as any reflection, either upon the courts or the bar; therefore it seems to me that it is not necessary to take time with discussion of that matter.

The introduction into the administration of justice of the United States of a system of arbitration, a proper system of arbitration, would be simply to extend those tribunals which exist in the States already, but this bill I do not believe to be

well constructed for that purpose. In the first place, the system which obtains in the States, so far as I know it, has been very well stated by the gentleman from Alabama. In my State there is a precisely similar system. It is that where the parties agree there may be appointed by the court or by the consent of the parties, or, as is generally the case, named by the clerk of the court by the consent of the counsel on both sides, three referees, to whom all matters in controversy are referred. Now, the usual result of our statute is that very many matters of fact, very many cases which do not involve any legal principle, are referred to that tribunal out of court, and the award of the referees comes in and is confirmed by the court, unless it is set aside for some matter, such as the improper conduct of the referee.

Such a system as that I think could be introduced into the Federal courts with advantage. It does not reflect on the court. It merely removes from the court a great mass of matters which may be as well disposed of by three judicious men, or, as our law terms it, I think, three judicious and impartial freeholders. It does not reflect on the bar, because the cases can only go to those referees by their submission by the consent on both sides. Very many of the cases are introduced into court by an amicable agreement for the purpose of being referred under what is called an amicable agreement reference. But this bill undertakes to do very much more. In the first place, there seems to be an impression in the minds of several of the members of the Association that this bill is going to operate in some way as a relief from the troubles which now exist between capital and labor. How is it possible, I ask you, Mr. President, that this bill can afford any relief to controversies of that character? How can you get any such controversies into the Federal court under a bill which provides that any dispute relating to any subject-matter arising under the Constitution or laws of the United States may be referred to such tribunals? How could the masons' and carpenters' strike in Chicago have come before a Federal

tribunal of that kind? It may be that in the onward sweep of centralization, which has been promoted as much by the Supreme Court of the United States as by any other influence in the country—particularly in the last Legal Tender decision—that we are coming to the point when such controversies will be embraced within the judicial powers of the United States courts, but certainly they cannot be now. The dispute between a citizen of New York, who is building a house, and the workmen, who are also citizens of New York, at work upon that house, certainly cannot be brought within the provisions of the bill.

Now, if that is the object of the bill it will not answer. There are other objections to the bill, I think, but it seemed to me there was a convenient method of getting at the sense of this Association on this subject, the preliminary subject, whether it is the sense of this body that there shall be introduced into the Federal courts any system of arbitration—I mean of voluntary arbitration by referees appointed by the court; and it seemed to me if we could take the sense of the Association on the question in the first instance, it might be done by a motion to recommit. I will make such a motion simply in order to see whether we cannot get rid of this question without going into an extended debate.

I therefore move you, sir, to recommit this bill, with instructions to report a bill providing for a system of arbitration in the Federal courts similar in principle to that in general use among the States.

I make that motion simply for the purpose of bringing up that preliminary question. I believe it has developed here amply that the sense of the majority of the members is against this bill.

Charles C. Lancaster:

I second that motion.

James O. Broadhead, of Missouri:

I don't see any necessity of referring this bill back to the Committee, and I say that because I see no necessity of

amending the laws of Congress so as to authorize arbitration in the Federal courts. The system of arbitration prevails in most of the States under State statutes. It has almost grown into disuse in most of the States because it is an inconvenient and unsatisfactory mode of settling controversies. The experience of all lawyers here from different parts of the Union will bear me witness in what I say in that respect. I know the arbitration law in Missouri is seldom called into use, because it is unsatisfactory, and almost always results in a suit upon the arbitration bond. I hardly know of an instance in which an arbitration has not resulted in a lawsuit afterward. Then I say it is unsatisfactory because the rules of law established in courts of justice are not, as a general thing, applied by the arbitrators. This bill which is up for consideration is really not a proposition for arbitration at all. The basis of arbitration is this: Parties agree together to submit that controversy, and the submission, which is in writing, determines what shall be the power of the arbitrator. Now, here there is no provision for submission at all, but the parties go before the Federal court and apply for an officer or officers to be appointed to determine the controversy between them. The officer is not agreed upon by these parties at all, but is appointed by the court, and there it departs from the principle of arbritration, because the person appointed is not agreed upon; in other words, it is simply a different mode of trying a cause in court. That is all there is of it—of trying it before a third judge who is appointed by the judge upon the bench; and with this difference: That he is authorized to determine the controversy without reference to the rules of law, without reference to pleadings except such as he may establish of his own accord, and the controversy is to be decided according to the principles of equity and justice. That is the provision of this bill. What equity and justice? Why, the equity and justice that may reside in the breast of the person appointed by the court, whom neither party to the controversy knows or selects, and whose decision, if there is no fraud in

it, is not subject to appeal. Now, that is a great objection to this system, and there is no occasion for it in the Federal court. There is not one case in five thousand where the Federal court would have jurisdiction over controversies of this kind. The persons must be citizens of different States, or it must be a question arising under the Constitution or the laws of the United States, or Acts of Congress, or some other ground of Federal jurisdiction.

Therefore I say this bill is utterly unnecessary. There is no occasion for giving to the Federal courts any further jurisdiction. The State Legislatures have amply provided for controversies to be submitted to arbitration where the parties make their own submission, and that submission is the law which governs the arbitrators in their determination of the controversy. In other words, it is called a system of arbitration when it has none of the elements of arbitration except the power that resides in the person appointed by the court to determine the controversy without regard to the laws of evidence or the pleadings established in the courts of justice.

C. C. Bonney:

I rise to a question of privilege. I moved the adoption of the resolution reported by the distinguished Committee on Jurisprudence and Law Reform, but after what we have heard it is evident that there is such a wide diversity of opinion as to what the bill aims at, as well as what the result would be, I ask leave to withdraw the motion and let the matter lay over until some other time, when there may be a better understanding of the bill.

Wilbur F. Sanders:

I do not understand, sir, that this is a question of privilege, and for myself I am in favor of disposing of this proposition here by voting down the report of the Committee. I should not have disturbed so august a body by what I have said here had I known the Pandora's box that was about to open, but, in common with all lawyers, the more I see and

know of law the more I am impressed with its dignity and beneficence. The judicious Hooker tells us of law that "her seat is the bosom of God, her voice the harmony of the world. All things in heaven and on earth do her homage, the very least as feeling her care, the greatest as not exempted from her power." And, sir, in the presence of this body of lawyers, stripped of every disguise, we are asked to pass a resolution which I say is a vote of want of confidence in the law. I appreciate the argument of my friend from Illinois, that the disturbances of the last few years may well excite the solicitude of American citizens. Whoso does not see them is blind, whoso prescribes arbitration as a panacea for them is an empiric, and whoso surrenders to them is a coward. I have been dealing for many years with humanity in the raw, and just to the extent that you will give advantages to those that appeal from the law to force, from the order of court to the enthusiasm of mobs, just to that extent do you give momentum to that course which every good American citizen must regret. Now, what do you propose to do here? You propose to allow these men to say: "I will not abide by the law, I have combined with individuals to oppress labor," or "I have combined with alleged laborers to extort from capital, and I bring you a tribunal prescribed by a statute, and I dare you to submit your controversy to it." Every lawyer knows that it is an adage in our profession that if you have an unjust case, arbitrate it; if you have a good case, determine it according to the rule of law. And why? Because the law has crystallized into words formulas that embody the eternal truth; because ethics is itself law. Any man that does not find that good enough for the protection, the elucidation, the illumination, and determination of his case has not any business in a civilized world.

John F. Dillon, of New York:

Mr. President, in the absence of any member of the Committee who signed the report, I may be permitted to say a few words in justification of the result at which the Commit-

tee arrived. It has been very well remarked by one gentleman here that the question which this report presents and submits to this Association is not a question of detail; it is a question of principle, and that is whether the principle of arbitration which (I appeal to every gentleman here present representing the several States) is embodied in their statutes, whether that principle shall be introduced into the legislation of the United States. Is there any gentleman here who in cool and sober moments would say that he proposed to eradicate or annul all the statutes of the several States which provide that two or more parties, or any parties, may submit their controversies to arbitration, and that that award shall be made a rule of the court and enforced as its judgment? That is a sound principle of legislation, I take it; at least it is the law, I believe, in several States of this Union. There is no such law on the statute books of the United States. This report simply says, without going into detail, that it is the judgment of this Association that that principle ought to be introduced into the legislation of the United States.

Now, I understand my distinguished friend from Missouri to controvert it, but to controvert it on grounds on which he would propose to abolish every enactment in the States of this character. I take issue with him on that principle, and I ask, if the gentleman wish to force the issue here, I ask this Association to vote squarely upon it, and say whether as a representative body of lawyers they do vote down the proposition that parties to controversies ought to have the privilege of arbitrating them and have the award made the judgment of the court and to be enforced by it. That is the principle at issue here.

It is a mistake, Mr. President, to suppose that this principle which is here at issue relates exclusively to strikes. Gentlemen here have discussed the whole labor problem, but it is foreign to any legitimate discussion that arises under this report. I am painfully aware of the urgent necessity for just this sort of legislation. When the great Southwest

strike prevailed some months ago, I was asked, as counsel, to examine the question whether when men in four or five States, in hundreds, arrested the operation of trains, paralyzed the transportation interest of four or five States, delayed the carrying of the United States mails, whether there was any legislation of Congress that would entitle any shipper, or entitle the railway company, if it was a foreign corporation, to appeal to the majesty of the law to obtain its protection. Why, Colonel Broadhead knows that merchandise in St. Louis was piled almost mountain high, and laid there for weeks, and the law was powerless to afford any relief to the company or to the shippers; and in Kansas the complaint came that people were starving for want of supplies which they had been accustomed to receive on the railway.

James O. Broadhead:

May I ask a question? How many of the employees of the railroad in the Southwestern strike could go into the Federal courts to settle a controversy of that kind—courts whose jurisdiction is limited to the sum of $2,000 and over?

John F. Dillon:

If there is any controversy that can come there, then it ought to be permitted to go. But I don't want to take up much time. It is a boundless subject. Now, sir, I was saying—and I wish to call attention to what appears to me the misconception of this report—it does not propose to limit in one iota existing jurisdiction of the Federal courts, and if they are competent to redress these grievances the portal will stand wide open, just as wide as if this resolution or legislation in accordance with it had not been enacted.

Now, then, here is the strong argument for just this sort of legislation. We cannot close our eyes to the fact that disputes will inevitably arise between the employers of large numbers of men and the employed. When they arise the crisis is sharp and urgent. They are not of a nature to submit to slow delays, which necessarily characterize legal proceedings. If the Circuit Court of the United States should

have had jurisdiction over the abnormal condition of affairs that existed in the great Southwest strike, what a mockery of remedy to file a bill and await the slow process of the court for relief and judgment! Now, then, like all other wars, the issue must eventually be found in some form of adjustment or compromise. That was the issue of this strike, and gentlemen appear on this floor to-day in the interest and as the professed representatives of capital and say that is the real source of this objection to the bill, and the eloquent gentleman who just took his seat decides the question in advance, and he says in effect that every union of labor is in the wrong, and, for one, he is opposed to giving them any recognition in the statutes of the United States, or anything that can be construed into a recognition of their course.

Wilbur F. Sanders:

In what words did I say that, if you please?

John F. Dillon:

I understood the gentleman to say that he was opposed to this resolution, because he was not in favor of recognizing any collection or combination of men as being in the right, and to give them any recognition by legislation.

The argument sums up in this: Capital and labor in the great Southwest strike came face to face, and the directory of the Missouri Pacific Railroad Company authorized its President to say—and that is a part of the history of this country—that that company was in favor of adjusting difficulties of this kind by arbitration, although it was confessed that that was the most causeless strike on record in this land or in Europe.

Now, then, how is it? I know that it is the sentiment of railway managers charged with the preservation of capital and its rights, that it is necessary, or at least advisable, that there should be some tribunal constituted having more or less of an official character, to which they can say, when one of these conditions arise: "We think we are right; you think you are right." The State of New York has just such

a law as this, passed last winter. And if it is not a controversy within the jurisdiction and powers of the Federal court, then one party will say to the other: "We are willing to submit this controversy to this official tribunal." In every such controversy it is in the last result an appeal to the public opinion. It will sustain the party which is right, and if one party says, "I am willing to submit this to arbitration," and the other refuses, the effort ends. But it is an incident in the history of this struggle, and it redounds to the benefit of one or to the disadvantage of the other, as the case may be, and it is this idea which is the strongest recommendation of this bill, viz.: that the ordinary processes are not adapted to a solution of this controversy. And therefore I do not exactly appreciate the argument of my friend proposing to vote against this resolution, not because he is opposed to it intrinsically, but because his remedy would be an enlargement of the jurisdiction and powers of the Federal court. I don't object to that; but is that any reason why, if a controversy does fall within the jurisdiction of the Federal court, there may not be the power to supervise that arbitration, precisely as under State laws arbitrators within the jurisdiction of the State courts are supervised? And therefore I say the question is before this Association whether they deliberately reject the principle of arbitration as applicable to controversies falling within the jurisdiction of the Federal court.

A Member:

Do you not depart in the first section of this bill from the laws providing in different States of the Union for arbitration in this respect, that you appoint by the court one referee, where in our courts of the State, cases being tried there, the parties select the whole three or five?

John F. Dillon:

Not at all. I am very glad the gentleman has asked the question. Certainly, it is quite true that A and B get together and say they will select so and so; but this is not different in principle, because the object of this bill is not a

compulsory arbitration. No one is compelled to accept its provisions, and when he does he is to be taken as consenting to the arbitrators named in the bill, precisely as if he had selected them himself. It is, therefore, not in violation of the principle of arbitration.

Robert D. Benedict:

If you will allow me to say right there, this bill does not provide for any such thing as has just been suggested. It only provides for the appointment by the court of a list of general arbitrators and for the submission of any controversy to any one of those arbitrators. Then it provides also for the submission to any one of these and three other men selected by the parties. It thus contains everything that is involved in customary submission to arbitration. Arbitration exists all over the country, and it is not going to be changed—I mean by that, arbitration the result of which you can make the decree of a court. Now, gentlemen, is it of any advantage anywhere to make the result of an arbitration the decree of a court of the United States?

Charles S. Bradley, of Rhode Island:

I rise to a point of order. I ask if it is the mode of proceeding in the American Bar Association to ask its members to vote upon a proposition that is not before them on the table. This motion here is that we approve of a certain act in a certain volume at a certain page. The deliberative bodies to which I have been accustomed always require that that act be upon the table. You go a step further. You put that which we are to vote upon in print and circulate it among the members. Now, unfortunately, I, for one, was not here last year, and I want to know what we are voting upon. What is the law to which our vote will give the sanction or disapproval? It is not on the table, and is therefore not before us. Again, I understand the gentleman to arise here representing a body of this Association, many of whom are unfortunately absent. In their behalf he says, considering the gravity of the question and the misunderstanding of the

subject we are voting upon, that he will withdraw his motion to adopt the report. A single member of the Committee, who is here, rises to protest against the action of the Association. I second the motion to withdraw this report from present discussion.

R. D. Benedict:

I do not understand what is the gentleman's point of order.

E. B. Sherman:

I would inform the gentleman that Mr. Bonney was not a member of that Committee, and had no more right to withdraw the report than I had.

Charles S. Bradley:

The point of order, nevertheless, remains that that Committee have not put in legal form the matter before us which they ask us to approve of.

James O. Broadhead:

I submit that the motion to recommit is in order.

Robert D. Benedict:

Mr. President, have I the floor?

The President:

Mr. Benedict, of New York, has the floor.

Charles S. Bradley:

If Mr. Bonney is not a member of that Committee then I withdraw my second of his motion.

John F. Dillon:

If Brother Benedict will yield the floor to me for a moment, I desire to state this: As the motion has been made to recommit this report, and as the only member of the Committee who is present, and not having myself drafted the report, and in view of the diversity of opinion which seems to exist here concerning the exact nature and effect of the bill the principle of which this report recommends, I am willing to take the responsibility, in behalf of the Committee, to accept the motion to recommit, if that is the pleasure of the Association.

The President:

Mr. Benedict has the floor unless there is some point of order raised.

Robert D. Benedict:

If a motion is to be made to recommit and is to be voted upon without debate, I will say nothing further, because it is obvious to me that the members of this Association had not sufficient information, with reference to this matter, to discuss it properly. They evidently have not read, many of them, the provision of the law which they are asked to vote upon; and in that condition I think the report ought to be recommitted.

E. B. Sherman:

It is quite obvious, Mr. President, from the remarks which some of my brethren have made since I took the floor, that my remarks were misunderstood. I was simply discussing the question whether the principles embodied in this bill were fair and just ones; and although it will, as Judge Dillon has said, only reach a few cases, yet it will be a valuable precedent for State Legislatures to adopt. Of course, ordinary controversies between laborers and their employers are not cognizable in the United States court. But in some very important cases they are so cognizable.

The President:

The question is this: A motion has been made to adopt the report of the Committee. A motion has been made to recommit, with instructions to report a bill on what has been termed the Mandarin principle. The motion to adopt has been withdrawn. There is, therefore, nothing left to be voted upon except the motion to recommit.

George H. Bates:

With the permission of the Association, I will modify that motion, and make it a motion to recommit simply, without any instruction.

C. C. Bonney:

I second that.

The motion was adopted.

The President:

The next business in order is the report of the Committee on Jurisprudence and Law Reform, who recommend the following resolution:

"*Resolved*, That it is the sense of the Association that all reports should be published by the State Government and should be offered for sale at the cost price."

G. H. Breaux:

I second that motion.

Charles W. Hoffman, of the District of Columbia:

Mr. President, I am very well aware of the evils resulting from the multiplication of the reports, but I don't think that this resolution is going to effect anything at all. I really don't see that it is.

George H. Bates:

We are certainly now passing through a very great change in regard to the publication of law reports in this country, and I do not think that it is an opportune time to act upon this question, and therefore I move that this resolution lay on the table at this session.

This motion was lost.

The President:

The question is now on the adoption of the resolution. All in favor will say aye.

The motion was then adopted.

The President:

The next business is that of the Committee of Judicial Administration and Remedial Procedure. Is there any report from that Committee?

Rufus King, of Ohio:

Two subjects were referred to that Committee at the last session, one being the subject of penal colonies, and the other of a proposed law for a uniform code of procedure in the courts of the United States. There are two reports, one of

which Mr. Garnett will present and the other report is to be presented by Mr. Benedict.

Henry Wise Garnett, of the District of Columbia:

The first report, gentlemen, is that on the subject of penal colonies.

(*See Appendix.*)

Rufus King:

I move the adoption of that report and that the Committee be discharged.

The motion was adopted.

Robert D. Benedict, of New York:

The other report, Mr. President, is as follows:

(*See Appendix.*)

Henry C. Semple, of Alabama:

I move to postpone the consideration of that report until the next session. It is a subject which involves a change in the mode of procedure.

Rufus King:

I second that motion and would accompany it by an amendment that the report made by the Committee on Jurisprudence take the same course, and that both be printed and made the subject of a special order for the evening of the second day's session of the next meeting.

Henry C. Semple:

I accept the amendment.

The motion was adopted.

The President:

The next Committee in order is the Committee on Legal Education and Admissions to the Bar. There is no report from that Committee. The Committee on Commercial Law is the next.

George A. Mercer:

The Committee would submit the following report.

(*See Appendix.*)

C. C. Bonney:

With the consent of Mr. Mercer, I would suggest that the further reading go over until to-morrow.

George A. Mercer:

Gentlemen, if it might take that course I should be very much obliged to you.

Augustus O. Bacon:

I think that report ought to require the most careful deliberation by this body before it decides upon what action it will take. It is certainly one of the most radical measures which could be proposed relative to our Federal legislation. Speaking for myself, I am at present most decidedly opposed to the recommendations of the report, and I think I am unalterably so. At any rate, I would not be willing to cast my vote in the affirmative.

The further consideration of the matter was postponed until next morning.

On motion, the Convention adjourned to meet at 8 P. M.

EVENING SESSION.

The President:

The Association will please come to order.

The Secretary:

I have a notice to give that will occupy but a moment. It has happened every year that gentlemen, and sometimes those living quite far off from the place where we have to print our reports, desire to have their remarks sent to them to be corrected and revised. This year we have three copies of the proceedings, in type-written copy, of the preceding day. One copy is in the hands of the President, one in the hands of the Secretary, and the other will be found on the table, and if gentlemen feel enough interest in seeing how the stenographer has done his work to come up and correct it before the matter goes into print it will save some time and trouble. I do not think we ought to be requested to send all over the country the printed slips to be corrected after we have put it in print, because it occasions great delay, and we wish to get the report out a little earlier.

George G. Wright, as Chairman of the General Council, reported the names of several new members.

(*See List of New Members.*)

The President:

I now have pleasure in introducing to the Association Mr. J. K. Edsall, of Illinois, who will read a paper on "The Granger Cases and the Police Powers."

(*See Appendix.*)

Thomas Dent, of Illinois:

Mr. President, the paper which has been read opens a wide field for discussion, presenting a question as to what is the proper domain for legislation. We may question in our own minds some of the things which have been stated in the paper, how far the Dartmouth College case has been limited in its application, and how far the courts are likely to regard that case in the future. I do not, however, rise now to enter upon this discussion. I presume there are gentlemen here who may take it up if time permits, but I should like to be permitted to say that I observe here a gentleman who has known a great deal of the history of legislation which was brought into consideration in these so-called Granger cases. I refer to Mr. Hurd, of Illinois, and some gentlemen here have been pleased to hear suggestions which he has made and of which he is capable with regard to the origin of that legislation, and I think, if time would permit, we should be glad to hear from him on that subject.

The President:

The order of business is not just now the discussion of that paper. We have got to get through with the reports of the committees before the paper is discussed. Is there any report from the Committee on International Law, which is next in order?

The Secretary:

I am not aware that there is any report from that Committee.

The President:

On Grievances?

The Secretary:

Happily, we have none.

The President:

On Publication?

The Secretary:

That Committee report to me, and I print what they order.

The President:

Then the next business in order is the report of the Special Committee which was appointed at the last meeting, of which Mr. Earle is the Chairman.

William E. Earle, of the District of Columbia:

I have a report, which is as follows:

(*See Appendix.*)

The President:

What action will the Association take upon this report?

Charles C. Lancaster:

I move that the report be adopted.

Thomas Dent:

I second the motion.

It was then adopted.

The President:

I call the attention of the Association to the report of the Committee of the last session, accompanied by a resolution, which is the next business in order. It is a discussion of the report and action on the report made in 1886 by the Committee on Jurisprudence and Law Reform in regard to the use of the whipping-post as a punishment for crime. The resolution which the Committee reported is as follows: "*Resolved*, That, in the opinion of the Association, the interests of society would be promoted by the general use of the whipping-post as a mode of punishment for wife-beating and other assaults on the weak and defenseless, such as assaults committed with sand-bags, brass knuckles, or similar weapons."

Robert D. Benedict:

I move the adoption of it.

Motion to adopt was duly seconded.

Egbert Whittaker, of New York:

I hope, sir, that report will not be adopted. The establishment of the whipping-post would be a retrograde step. How many States in the Union have a whipping-post now? But a very few. If you establish the whipping-post I shall be very happy to think that it will be Balston Spa and not Saratoga Springs where it will be set up, and not next door to the splendid Congress Spring Park. I am opposed to it because its use is liable to abuse and is dangerous. I remember reading of the whipping of Dangerfield in the time of James II. He was tried for a crime of some sort which was not punishable by death, but the court sentenced him to be flogged so that it would kill him. And they did flog him until it resulted in death. What limit will there be how much a man shall be flogged? What number of lashes will be administered, and with what force? Another objection is that it is in the nature of torture, and the age when that was allowed is passed. There may be something of the kind in a State prison for the sake of discipline, but outside of it, it never should be allowed. It would be only another step backward in civilization. I object to it also on moral grounds, that it tends to degradation, and not to reformation. If you establish the whipping-post I think the American mind by a very large majority would rather be put under the guillotine. For these reasons, Mr. President, I am opposed to it.

Simon Sterne, of New York:

I trust, sir, that this resolution will prevail, and that, to some extent, for the very reason mentioned by the gentleman who has preceded me—that some men prefer death to whipping. Some twenty-two years ago I happened to be in London immediately after the whipping-post was re-established for the crime of garroting, and I met at a club Sir Edward Hill, who then had had some thirty years' experience in the administration of the criminal law of England. I had spoken with great warmth and pretty much after the same

manner as the gentleman who last spoke about the retrogade character of that kind of punishment at the present era of civilization, and Sir Edward Hill set me right with great promptness by stating to me that his long experience in relation to the administration of the criminal law had taught him that long sentences make very little difference in their deterring influence upon criminals as compared with short sentences, for the simple reason that these criminal classes are devoid of imagination. It took me some little time to understand what he meant, and I asked him to explain, and he said: "Why, you take a man thoroughly civilized, with a high-strung nervous organization, of course; if you segregate him from the rest of the community and immure him within prison walls he would infinitely prefer death; but these criminal classes, with their senses blunted and their degraded condition, don't understand those distinctions; their imagination don't take in the difference between two years and twenty years, and long sentences do not deter them to any extent. Certain classes of crime must be met by terror." At that time the English people were suffering from garroting to a considerable extent. The Thames Embankment was just then being constructed, and along the line of that Embankment these crimes were being perpetrated. They tried long sentences, but it did not produce the deterring effect. They tried the whipping-post, and it did have the deterring effect. Now, how did it affect the criminal classes? Why, a man is deterred from doing certain acts because he loses caste among his own class. Now, we are all influenced by the fact that among our own surroundings, be they decent or indecent, we lose caste. The whipped man loses caste. He is looked upon with scorn by his own associates. The consequence was that nothing so affected the imagination of the criminal class, and particularly those who were likely to commit brutal offenses, as the fact that they were to be whipped. So strongly, therefore, has that influence been exercised upon the criminal classes by the whipping of

offenders, that garroting has become almost a thing of the past, and in its application to wife-beating it has also very considerably lessened that form of brutality. Now, it seems to me that there is not anything of a retrograde character in society in applying the lash to people who themselves commit these acts. A witty Frenchman was once asked whether he was in favor of abolishing capital punishment, and he said: "Yes, but I want the criminals to set the example. They regard the possession of a watch on my part as a good reason for perpetrating capital punishment. Now, when they abolish capital punishment and set the example, we will follow."

Now, it is the same with reference to certain forms of brutality. A man who has a helpless woman in his charge, and because she is his wife regards that as a good reason for treating her brutally, should be whipped with the lash. Why, sir, some few years ago in the city of New York a shoemaker drove his awl into the eyes of his young wife, an eighteen-year-old girl, because she had looked admiringly upon some men. As to that man, I would regard it as no offense to have him stripped once a week during his life and thirty lashes applied to his back. Now, I say once more that you must take into consideration, first of all, not general phases of what is civilized or uncivilized, but what deters the criminal classes from committing crime; and under those circumstances the testimony of a man like Sir Edward Hill—though not published, but given in conversation over the breakfast-table—is worthy of consideration.

C. Stuart Patterson, of Pennsylvania:

I have only a few words to say, Mr. President, and I say those few words only because for a good many years past I have been a student of the treatment of the criminal classes, and for a number of years past I have been one of a body of five Governors which has had charge of a penitentiary containing one thousand one hundred convicts, and I suppose there are not many more gentlemen who have a more intimate

acquaintance with the criminal classes than myself. Therefore, I don't think I bring any prejudice to the consideration of this thing, but I do bring a certain amount of practical knowledge. Now, I think we will all agree that the object of the punishment of a criminal is not vindictive, and we will also agree that the object is not simply to reform him. Both the punishment and the reformation of the criminal are merely means to an end, and that end is the protection of society. It is for that that prisons are established. It is for that that courts of justice sit. Now, the very first thing that strikes you when you begin to study criminals is that you have got two classes to deal with. You have not only to deal with the young and the old offenders—that is one classification—but there is a broader classification than that, and that is that you have got to deal with those whom I may characterize as casual offenders and those who are by inheritance predisposed toward crime. Dealing with those two different classes, you cannot scientifically undertake to deal with them in the same way. One thing that strikes you is that for certain classes of people imprisonment within the walls of a prison is a severe punishment which makes an impression upon them, but it strikes you at the same time that when you have to deal with those that belong to the criminal class that imprisonment is not any punishment at all in the proper sense of the word, for the reason that you bring those men from a precarious condition of life and put them under modern conditions of society in a prison where they receive regularly good food and are carefully treated. That is certainly a fair statement of the custom of modern prisons in all civilized countries. Now, you bring in there a man who has been guilty of violence against a person. He has simply a feeling of restraint. To that extent he is punished. He finds that in playing his game against society he has lost a point. Perhaps I can illustrate that by a little experience. Within a very few months I was present at the prison when a prisoner was discharged at the end of a five years' term. He had

committed a very aggravated assault and battery. He had inflicted upon his victim that which was far worse than death. He was sent to prison for five years. I saw him when he went out. I was present at the prison within three weeks when that same man came back again, and when I saw him come in I said: "Here again; why?" He said: "As soon as I went out, I went at it again." Now, what is the use when you are dealing with a brute of that sort of simply sending him to prison. He ought to be whipped. I tell you there is a great deal of sentimentality in the country with regard to the treatment of criminals. We have got to protect the innocent as well as the criminal classes; and I do say that I earnestly hope this resolution will go forth with the stamp of approval of this Association.

Julius B. Curtis, of Connecticut:

As this resolution is stamped with the name of one of the leading gentlemen of this Association, Mr. Baldwin, of Connecticut, I think I have a right to say, so far as my own State is concerned, that I don't think the State of Connecticut is retrograding in the direction of the whipping-post, or in the direction of the burning of witches. I think we got rid of the whipping-post very many years ago, and I believe we shall stay rid of it. I have heard the arguments which have been stated here. The last gentleman, it seems to me, misses the question entirely. He says the present means of punishment are inadequate. That may be, but are they met by the whipping-post? Is that adequate? Take such a criminal as he has described before this meeting as having committed an infamous offense, and then returned to prison. Would the whipping-post deter such a criminal?

C. Stuart Patterson:

I think it would.

Julius B. Curtis:

I will admit that if you take his life it would end the matter, or if you were to torture him in such a way as to render him incompetent to do harm any more, that would

end the matter. The truth is that the whipping-post will not do that. You would have to go into the whole system of torture. You would have to bring out the criminals who should be whipped—this one to be whipped, and this man tortured, and this man to be burned. All these things we got rid of years ago, the whipping-post with the rest. Now, this important provision is in the Constitutions of all the States, I believe, that cruel and unusual punishments are not to be inflicted upon criminals in this country. What are cruel and unusual punishments? The whipping-post was in existence when the Constitution of the United States was first established, but wise men brought it under that provision of the Constitution, and said the whipping-post was an unusual and cruel punishment, and, although it then existed, civilization does not permit it at the present time. There is a great and important matter to be considered in this question so far as criminals are concerned, but it is not the whipping-post. I often hear gentlemen say that they wish the whipping-post was established again. For what? Wife-beating. Would that prevent it? Suppose a man committed a cruel act upon his wife, and you take him and whip him for it, would he live with his wife after that? I tell you, gentlemen, you had better adopt the law of Connecticut and give the wife a divorce and have an end of it. Now, I understand that such a law as this has been passed in Maryland. I believe there has only been one man whipped there under the law because the wives would not complain of their husbands.

Robert D. Benedict:

Has the gentleman read the report of the Committee, in which the Committee showed what was the effect of that one man's whipping?

Julius B. Curtis:

No, sir.

Robert D. Benedict:

I recommend the gentleman to read it.

Simon Sterne:

Won't you refer to it, Mr. Benedict.

Robert D. Benedict:

(Reads from the report of the Committee referred to.)

Julius B. Curtis:

Does that meet the case? The gentleman says there have been very few cases. The Committee reports that fact. But have they gone behind the scenes and found how many wife-beaters there are? The truth about this is that at this period of time I am not in favor of any such law as that.

Skipwith Wilmer, of Maryland:

It may be doubted, Mr. President, whether it is wise altogether for questions of this sort to be raised in the Association until we are prepared to express ourselves decisively upon them. I do think, however, that as this question has been raised, as it has been before the Committee for one year, and before the Association for one year after the Committee has made its report, it will be very unfortunate that there should be any expression of opinion upon this question that would leave society in a more defenseless condition than, in my judgment, is the one which it now occupies. I think every gentleman here will recognize the fact that while crime is steadily on the increase, while the census of 1880 shows twenty-five per cent. more of criminals than was shown by the census of 1870, that the resources of society for the effective punishment of crime have been steadily diminishing. Not a year rolls by that the Legislature does not abolish labor in one form or another in some of our penal institutions. Whenever an industry is conducted there with sufficient prosperity to interfere, in the opinion of men engaged in similar work outside, with the profits of their trade, a bill is passed prohibiting that industry. Some of the States have abolished labor in prisons entirely. Some of the States, such as the State in which I live, have abolished certain forms of work. In houses of correction and institutions where criminals are confined who are sentenced for short terms, it is found that

they cannot be taught any trade. There is nobody who would contract for the labor of those criminals, because they come there ignorant of any trade, and consequently the lives of the inmates are passed in comparative comfort and absolute idleness. They are better clothed, better fed, better housed than when they were outside, and they feel satisfied no doubt about the continuance of their immunity from want. As has been said by the gentleman from Pennsylvania, to an overwhelming majority of the criminal classes mere confinement in a house of correction is no punishment at all. As the fall of the year approaches you will find that men commit a certain class of petty offenses so as to secure comfortable quarters for the winter. I remember last fall of a respectable looking man breaking a plate-glass window, and expressing great disappointment when he was only sentenced to jail for sixty days; he had expected to get a snug berth for the winter. Now, with this condition of things society is necessarily driven to secure some method of protecting itself against the criminal classes.

The offenses against property, of course, in this report we do not touch upon, but for the offenses against the person, where the circumstances show a deliberate, brutal intention on the part of the offender to make a brutal assault, it is proposed to apply the lash. In the words of the distinguished gentleman from New York, let a man who has been guilty of a brutal assault be whipped for his crime. Now, the offense which first called for some legislation on this subject in Maryland was the great frequency with which the police reported cases of wife-beating. They didn't call attention to quarrels between husbands and wives, but to cases of great brutality which occurred noticeably on Saturday night when a man would come home with so much of his wages as he had not spent in drink and then commit a brutal assault upon his wife. The only punishment that could be inflicted was to try that man before the committing magistrate and send him to jail for thirty, sixty, or ninety days. What was the

result? The woman and children were left to starve until he got out of jail, therefore the wife would always say: "I cannot testify against him. I cannot call aloud for the police. I must either be beaten and say not one word or I must be prepared to beg until this man is released from jail." Therefore the Legislature saw fit to say that in cases of this sort they would inflict the only punishment which seemed to be appropriate and did not make the poor woman suffer as well, and so they provided that the offenders should be punished by whipping. What was the result? The Committee of this Association applied to me to secure statistics upon this subject in the State of Maryland. Now, I am well aware that statistics are not always very reliable, but, conscious of the responsibility, I did not go to the court for my statistics. I went to the Marshal of Police, I went to the Captains of Police in the various districts, and I collected as carefully as I could all the information that they had, and the statistics as furnished in the report of the Committee I am assured by the Marshal of Police—who has been at the head of the police force of Baltimore for twenty years—understate rather than overstate the facts. And the result has been that cases of wife-beating have been rare indeed. A few days ago I saw in the papers the first case of the kind that has attracted public attention in three years, and it was the comment of the paper that it had been so long since a case of this sort had come before the court and so long since the last offender had been flogged, that it did seem as if it was necessary that the minds of these men should be enlightened that the law still stood on the statute books of Maryland.

I think that a system of punishment which has been so useful in stamping out the crime of wife-beating might be profitably extended to other classes of crime. I think that where a man has been brute enough to commit a brutal crime the punishment would brutalize him no more.

E. B. Green, of Ohio:

Mr. President, I rise neither to oppose nor advocate the

resolution, but simply to say in behalf of the women of the United States, outside of Connecticut, that I hope this Association will not fall into the error which that State has, granting to a man a divorce if he can prove that he has beaten his wife.

Julius B. Curtis:

I did not say that.

E. P. Green:

I so understood you.

Julius B. Curtis:

I cannot furnish ears and talk too. I said the wives were entitled to get a divorce if they were brutally treated by their husbands.

E. P. Green:

Well, in Ohio, when we divorce one, we divorce the other, —not following the example of New York, divorcing only one.

E. O. Hinkley, of Maryland:

I feel that in accepting an office in this Association I have not lost my right to descend to the floor and debate occasionally, and I have done it at rare intervals. When I heard Baltimore referred to I thought it was right that those from that State should be heard. Mr. Wilmer has said nine-tenths of what I wanted to say, and, therefore, I will not go over the ground that he has covered, but I will go to another point. I have long been convinced that there is an inherent principle in regard to the nature of application of punishment derived from the nature of the crime, that there is a certain ratio between the crime and its punishment. I take that to be an inherent principle, a law of society, a law of nature, inherent and inevitable. I find it in history, and I find it in the history of the oldest nation of whose laws we have any record. It is called the *lex talionis*. Now, as a father, I know that children must be corrected, but any man of good sense and feeling will never go a hair's breadth beyond the application of a principle that will make the subject feel the consequences of his own act. Thus, if it were

possible, Mr. President, I should say that the crime should work out its own result. If a man in folly strikes his fist against a stone wall, that stone wall hits him back as hard as he hit it; that is a physical way of putting the thing. Now, let him strike the law, and let the law hit him back, and let the man feel that the punishment that is coming is by society adopted as nearly as it is possible for human ingenuity to contrive to the nature of his offense. Now, my next point is this: That everything which we do in the law ought to be adopted to the end designed, and ought to be practical. Therefore, I quit my theories as perhaps not altogether practically sound in the views of some, although I am convinced that the general principle is correct, and let us come to the practical question.

I heard this argument adduced about capital punishment: A man coming to the scaffold to be hung said: "I never would have killed that man if I had known that I was going to be hung for it. I thought the punishment was imprisonment for life." That was once urged in favor of hanging. I think that a man would have a sense of the particular evil he was doing if it were retaliated, and he felt that it was to come right back upon himself. We avoid those things that in nature do retaliate, and some of them retaliate so quickly that we shrink in horror of the result. Now, the gentleman from New York has given some testimony upon this subject; the gentleman from Pennsylvania, who has had considerable experience with criminals, has given his views, and we have listened to what has been said by the gentleman from Baltimore, and to that I can add a story that has long been told in Baltimore, of one of our wealthy citizens, who is an Irishman. There is an Irish woman in Baltimore who is very apt to be noisy on the street, and she was very often admonished about it. When she was talked to about her conduct, and particularly about her thriftlessness and liability to be in want in the winter, she said: "Och! I've only to go up to me brother Mc— and break a window, and I'll get a nice

lodging fur the winter." That has often been told in Baltimore to show that people are not deterred by being put in the penitentiary. I remember a case that I had for contempt of court, where the woman was put in jail, until at last the judge begged of me to make a motion to the court to let her go, because she didn't care anything about it. She was quite comfortable there in the jail, and had better living than she was accustomed to outside. Now, I come back to the point that there is an inherent principle in the law that the law must retaliate something that it has derived from crime itself, and the punishment ought to be something that has relation to the crime; and then I have no doubt as to the results, and the proof of the matter is in the final practical result. I think we in Baltimore do know that that law which says that a man who is guilty of wife-beating shall be whipped has had a deterrent effect. With regard to the relation of husband and wife, I was interested in what the last speaker said. Can it be supposed that there is no room for a return of a man who has beaten his wife when he is punished by the law to his proper relation. It won't do, I think, to say broadly that he cannot or will not return. If it should so happen that a woman of delicate sensibilities had relatives, who said to her that they would take care of her, and "You never shall live with that man again," very well. Now you are going into high walks in society, where such things prevail, but when you are coming to the lower ranks, I don't hesitate to say that a man may whip his wife and then be whipped by the law and then go back again.

R. E. Monaghan, of Pennsylvania:

If you whip the husband for flogging his wife, what will you do with the wife that flogs the husband?

E. O. Hinkley:

Well, I should have her punished in some appropriate manner.

W. T. Houston, of Louisiana:

I trust, Mr. President, that this resolution will not pass.

We must not lose sight of the fact that there is always a certain amount of crime in the world; there is a certain amount of percentage of offenses against property which will continue to exist as long as the world shall endure. It is the object of society to reduce the percentage of offenses against persons and property to the minimum, but it is absolutely impossible to stamp out offenses entirely. It may be that at the present time offenses of a particular character have become glaring, and it may be that those offenses seem to call for a remedy; but certainly we must not lose sight of the experience of past ages and of the conditions of our nature in providing for remedies against those offenses. The gentleman from New York spoke of garroting in London having been stopped by the re-establishment of the whipping-post. Some years ago in the city of New Orleans, garroting became quite rife. A great many cases of garroting took place in the vicinity of a spot called Lee Place, where there is a monument to General Robert E. Lee. Now, that crime was not met by a return to the practices of the middle ages, but by the ordinary execution of the law, by the fact that the police captured a certain number of them, and they were punished according to law. I do not recollect a case now in the last fifteen years. Now, suppose at that time our people had lost their minds in the presence of this new outbreak of garroting and had come to the conclusion that it was necessary to put out the eyes of the garroters, and we had established a place on Lee Circle, the very spot of their offense, and had there caused their eyes to be put out? Would not a thrill of horror have gone through the whole United States? Now, I ask you, gentlemen, have you ever seen a man flogged? Well, I have. I saw a colored man flogged in the Confederacy, and, Confederate soldier that I was, I sickened at my heart and I felt a sense of humiliation and degradation that I was a witness of such a scene.

A member:

What was he flogged for?

W. T. Houston:

He was flogged for deserting. We had a lot of negroes working on fortifications. They were sent to us by their masters. They ran away, and some of them were recaptured and flogged, and I know that the men of my company who witnessed it—and they were Missourians—sickened at the very sight, and protested that they would never permit any more flogging done in their presence.

A member:

Have you ever seen a white man flog his wife?

Simon Sterne:

That's the question.

W. T. Houston:

I am glad the question has been asked me, and this is the answer to it: Society must not descend to the same practice that calls for punishment; we must not educate children that brutality is to be met by brutality, and that brutality is the normal state of mankind. The object of all government is to civilize the great mass of the people. Now, no man can deplore wife-beating more than myself; but, gentlemen, the flogging of a wife-beater is not the degradation of the wife-beater, but it is the degradation of the Government or State that inflicts it; it is the degradation of the men who witness the flogging; it is the degradation of the man who wields the whip; it is the degradation of every man, woman, and child that reads in the morning papers an account of the disgraceful, inhuman, and brutal thing that has been committed in the community in the name of law. Gentlemen, we are all familiar with cases of lynching. What is the motive of lynching? Is it respect for the law? No, not in one case out of ten. The resort to lynching is to satisfy the bloodthirsty, cruel feeling lying dormant in the breast of the lynchers. It is that feeling that makes a man beat his wife; it is that feeling that makes a man slungshot his victim. The lyncher is himself a criminal, and he is gratifying criminal desires. He pretends to act for the vindication of the law. Now, in the

same way, if you establish a whipping-post for one offense it will come in for another, and the general result will be a lowering of the moral tone of the whole body of the people and a return to the methods of the middle ages. Why, there was a time when horse-stealing and petty larceny was punished by hanging. Now, all of these things have ceased. Why? Because we have found that they were not necessary. Now, there may be from statistics some increase in the number of crimes committed, but that is attributable to the fact that the number of crimes has been increased by statute. I read recently of a man in New York who was convicted of abduction and sentenced to prison. His offense consisted, not in carrying away the girl, but he took a girl who was under the age of sixteen years to his room. Now, that is an entirely new offense in the State of New York—I mean it is a new statutory offense. That man figures in the list of crime as an additional criminal. Such things were done prior to that time, the world was just as bad, but that particular statutory crime did not exist. As we increase the number of statutory crimes, necessarily the number of criminals will seem to increase; but for all that the world is getting better. I think, therefore, it would be wise for us to act in a way that would indicate that we had not lost all hope of reducing crime to the minimum.

J. R. Johnston, of Ohio:

Mr. President, two arguments only have been adduced in support of this resolution. One is the experiment made in the State of Maryland recently, by which an apparent reduction of the crime of wife-beating has taken place in that State. What other causes may have tended to bring about that result in the State of Maryland is something we ought to know before we must conclude that it is to be attributed to the operation of this statute. There are many things operating in the State of Maryland, and one of them is the progress which they ought to be making to keep pace with the American people in civilized parts of the United States,

but that is not all. The other is that the application of the whip to a criminal has a deterrent effect by making him lose caste even with the criminal classes with whom he associates, that is, it tends to degrade him still more than the crime itself, and drives him further down the scale of crime. Now, I have always observed that the great bulk of our crime is committed by the degraded classes. Therefore, if you increase that class, making that degradation still greater, what will be the result? I ask my friend from New York, who says that that is the best argument he can adduce here.

Simon Sterne:

The man who has had the lash applied to his back may be degraded still lower than the condition he was in before he went to the whipping-post, but the class is deterred. That is my answer. We will deter from committing offenses, not only by the moral law, not only by the condition that may be within or upon us, but also by the tone of society around about us.

Adjourned until to-morrow morning at 10 o'clock.

THIRD DAY.

Friday, August 19, 10 *A. M.*

The President:

The first business this morning is the nomination of officers.

William P. Wells, of Michigan:

For reasons which will presently appear, this report is presented by me instead of by Judge Wright. I am instructed by the General Council to report the following nominations for officers of the American Bar Association for the ensuing year:

(*See the List of Officers at the end of the Minutes.*)

Adopted.

William P. Wells:

The General Council recommend a candidate for membership. He was duly elected.

(*See the List of New Members.*)

The President:

I wish to submit to the Association now what business they will prefer to proceed with. The situation of business is this: When we adjourned yesterday morning the reading of the report from the Committee on Commercial Law was being proceeded with. In the evening and when we adjourned, that report was made the special order of business this morning after the nomination and election of officers, but last night the resolution, which I now read, was under discussion:

"*Resolved*, That in the opinion of the Association the interest of society would be promoted by the general use of the whipping-post as a mode of punishment for wife-beating and other assaults on the weak and defenseless, or assaults committed with slung-shots, sand-bags, brass knuckles, or similar weapons."

That discussion was very nearly closed, and I have doubts myself which business is entitled to precedence. Therefore, I propose to submit to the Association which business they will take up first.

Robert D. Benedict:

I move that the discussion of last evening be continued and closed.

George Gray, of Delaware:

I move an amendment to that, viz.: That discussion be continued for fifteen minutes. I think that inasmuch as that was the special order for yesterday, as we have but three days in which our proceedings can be conducted, and there are several matters that may properly come before the Association of quite as much importance as that, I think after the full discussion last evening that fifteen minutes ought to suffice to close it.

The motion, as amended, was duly seconded and carried.

E. F. Bullard:

I move that each speaker be limited to five minutes.

The motion was adopted.

The President:

Discussion on the report is now in order.

Ignatius C. Grubb:

It is first necessary to know precisely the subject at issue. The question is not whether the whipping-post to the fullest extent, as administered in Delaware, shall be adopted by this Association, but whether it shall be adopted in the limited form mentioned in the resolution which applies to wife-beating, assaults with slung-shots, sand-bags, brass knuckles, or similar weapons—in other words, applies to those who show that they have abdicated their manhood and ought to be punished accordingly. That is the issue. That excludes, then, the sentimental view of this matter, and brings it down to the consideration of us as practical men. The day of the millennium has not come. When it does come and all men are perfect, then I have no doubt we can dispense with the whipping-post in accordance with the sentimental standpoint taken by some of the gentlemen here. In Delaware the millennium era has not yet occurred, I will say. At the same time we believe we have as honest, as valuable government, and as good as any State in the Union, and that Delaware ideas may well be adopted on this as well as on many other subjects with profit in larger States of the Union.

As practical men, we must consider this question from the standpoint with which the law looks at it in the administration of justice; that is, we must view it from the standpoint of the purpose of punitive legislation. That purpose is not chiefly for the reform of the criminal, but it is for the prevention of crime. It is intended, not out of sympathy, to take care of the criminal, but to take care of the public, to take care of the many who are honest and virtuous and not vicious as against the few who make up the vicious class.

Punishment, therefore, is intended chiefly to deter others from the commission of crime. When you punish a man who has shown himself to be a dastard and a miscreant among human beings, you set an example to others not to follow in that way and not to become so, or, if they are so, to desist from crime.

Now, gentlemen, that is the whole thing in a nut-shell. If you want to know what are the fruits of that policy as against the sentimental policy, as against the view that is urged here by the advocates of the millennial period, as we may call it, by gentlemen who are forerunners of Bulwer's Coming Race—I may say the men sent before, the nineteenth century John the Baptists—if you wish to know the difference between the practical result of the Delaware idea (I may call it, although it is limited here, properly) you may see it by going to Delaware, by studying our statistics, and if I had time I could read to you and can furnish them for publication if desired, which show that, whereas the percentage of crime punishable with whipping in the United States according to its criminal population is one out of eight hundred and thirty-three, in Delaware the percentage is one out of six thousand punished by the whipping-post in our State.

John H. Handy, of Maryland:

Mr. President, I regret that I did not hear the argument advanced against this resolution last night. This proposition to establish the whipping-post in cases of brutal wife-beating originated in the State of Maryland, which I then had the honor to represent upon the floor of the House of Delegates, and have now in part the honor to represent as a member of this Association.

I may say, sir, that as Chairman of the Judiciary Committee of the House of Delegates of Maryland, I reported that bill and fought it through the House of Delegates, and it became a law, the fruits of which are now being reaped by the public in the State of Maryland, and the good results and effects of which are circling around through this country, and I hope will embrace every State in the Union.

We passed this law not upon any sentimental ideas either for one side or the other. We believed that the time had come to take some stringent measures to prevent these brutal assaults by husbands upon wives.

Now, I understand that some gentlemen last night said here that we were rolling back the tide of civilization. It is strange indeed that such opinions should be advanced here, when the very essence of civilization is, as I understand it, to afford protection to the weak against the strong. There was a time, Mr. President, when the husband and the master had the right of life and death over his wife, his children, his slaves—and his wife was his slave. The very essence of civilization has been redeemed—the wife and the children of men redeemed from such a condition—and in furtherance of and as protection of that idea this law has been advanced by the Legislature of Maryland.

Sir, it is a revolting spectacle indeed to see a man writhing under the lash, but the man who flogs his wife brutally and has the lash laid upon him by the brother, the father, or other relative of the wife is thought to be justly punished by every man in the community who has a spark of manhood in his bosom. How is it, then, that when he is tried by a judicial tribunal where he has all the defenses that he can avail himself of, permitted to him either in denial or mitigation, and is convicted, and that same cowhide is handed over to the officer of the law, to be laid upon him according to the restrictions of the law, and not according to the unlimited idea of the private avenger—how is it, I say, that it becomes so obnoxious?

Sir, this resolution and this law cover both modes that deter men from such crimes. Humiliation for some—brutal I admit, because the man who can assault his wife is beyond all feeling of personal humiliation; and it covers the other branch. The sting of the lash is the strength of the law.

Mr. President, I remember well what opposition we met with when we attempted to pass this legislation in Maryland.

It was fought through the Senate of Maryland on these sentimental grounds. We were told all this matter about civilization and reform. Sir, penal laws are not made to reform the criminal. They are made to punish the offense, and if reform results to the man himself, or if reform results by its intimidating effect upon his neighbors, so much the better; but punishment is punishment primarily, and upon that theory alone has the State the right to inflict it.

P. L. Mynatt, of Georgia:

Two objections present themselves, Mr. President, to my mind to this method of punishment. While we do despise the culprit, we do not despise his children and his grandchildren and his great-grandchildren. The punishment to them, the punishment to his children, is as great as the punishment to him, except as to the mere physical pain. This character of punishment is more infamous than any. It makes a more indelible stain than any other sort—a stain from which his posterity will never be relieved. That is one trouble I have in my mind about inflicting this punishment. If the punishment stop with the man who whipped his wife I would have no objection to it. But, sir, you inflict a punishment upon his children, even to the third and fourth generation, from which they can be relieved only by hiding themselves.

I think, sir, that our free country is different from Great Britain in that particular. There, there is no care or concern about the future generation. In this country our greatest men spring from the humblest walks of life. Let us not put such a stain as this upon any of the children of this free land.

In the next place, another objection is that when you have punished the culprit, in three minutes he is out again upon the community. He is not in a place of penitence to reflect. But he is out again, a desperate man, with his wife at his mercy; he is out again with everybody subject to his malice; he is out again to perform all the devilment that is in his nature.

I think for these reasons that the penitentiary is the better place for that sort of a culprit and every other sort of one.

E. F. Bullard, of New York:

Mr. President, I have been in favor of aggressive discussions and resolutions in this Bar meeting, but it seems to me that this resolution goes a little further than belongs to the lawyer branch of the Government. I am in favor of every sort of resolution and action and discussion here which pertains to legal questions, but this is more of a social and political question, and one at which we cannot arrive at any unanimous conclusion. We might as well take up the temperance question or woman's suffrage question. We all know that ninety-nine out of a hundred wife-beaters are drunk on the occasion when they beat their wives. If whisky was taken away from them, there would be no beating of wives by husbands.

Therefore, I submit that that question rather belongs to the political branch, and I hope this Association will not pass a resolution which shall be criticised by the whole civilized world. I, therefore, move that the whole subject be laid upon the table.

Orlando B. Potter:

I second that motion.

E. O. Hinkley:

I ask to correct an error—

The President:

We cannot allow any discussion except by unanimous consent.

W. T. Houston, of Louisiana:

I rise to propose an amendment.

E. O. Hinkley:

I simply wish to correct something I said last night.

The President:

You may do that.

The Secretary:

In my remarks last night I gave a wrong answer to the gentleman who questioned me. I have slept over it and now I wish to correct it. Blackstone tells us that on certain occa-

sions women are the best judges of certain questions concerning themselves. I would take a woman who beats her husband and send her to a private apartment with three good wives, the first of whom should lecture her severely, the second of whom should whip her moderately, and the third of whom should instruct her in the art of managing her husband without beating him.

The President:

Now, Mr. Houston, your amendment is in order.

W. T. Houston:

I move to amend the resolution by adding the words: "And that any one convicted of the crime of rape should be burned at the stake."

Julius B. Curtis:

I second that.

E. F. Bullard:

Mr. President, a motion to lay on the table is not amendable, I believe.

The President:

That is true. Gentlemen, the question will first be put upon the motion to lay on the table. If that is passed, it will be an end of the subject.

The motion to lay on the table was adopted: yeas, 63; nays, 28.

The President:

The next business in order is the resumption of the reading of the report of the Committee on Commercial Law.

Gustavus A. Breaux, of Louisiana:

I move that the further reading of the report be dispensed with, and that the chairman of the committee be requested to simply read the conclusions at which the committee arrived, for the reason that the report has been printed, and we have all had an opportunity of reading it.

The motion was adopted.

George A. Mercer, of Louisiana:

The conclusions which the committee reached after a care-

ful consideration of the subjects, referred to them are as follows:

First. That the present needs of the business community for uniformity of law relating to the enforcement of contracts and the collection of debts imperatively demand national legislation as the only adequate means by which the desired relief and protection can be attained.

Second. That so far as interstate commercial transactions are concerned, Congress has full power to provide the necessary relief and protection by legislation under the clause of the Constitution giving it the power to pass laws to regulate commerce among the States.

Third. That this legislation requires only a short and simple act of Congress, such as would be easily intelligible to every business man, and its administration would require only the exercise of the ordinary equity powers of the courts of the United States.

Fourth. That, in the exercise of the same power, Congress should enact a statute defining the law relating to bills of exchange and other commercial paper, so far as the same is involved in interstate commerce.

Fifth. That if such legislation be once adopted it is likely that the State Legislatures would enact the same provisions for the regulation of commerce among their own citizens, and there would thus be provided a completely uniform system of law relating to the essential features of commercial transactions throughout the whole country.

Sixth. That it is desirable that Congress should enact a national bankruptcy law, and that such a law should be a short, simple, and concise act, and its administration should be under the direction of the court according to the ordinary and familiar rules of a court of equity.

The Committee recommend, if this report be approved, that the Association take such action as will bring this subject prominently before the people of the country, so that there might be brought to bear upon Congress, at its next

session, evidence of the pressing need of the business community throughout the Union for relief and protection from present difficulties which the proposed legislation alone can afford.

The Committee have not undertaken to consider and recommend the details of the legislation required to accomplish the desired result, but in order to suggest, in a general way, an appropriate form of congressional action, the Committee append hereto a draft of a bankruptcy bill drawn by one of its members in general conformity to the views above expressed, together with the bill to regulate interstate debts, credits, and collections which was submitted at the last annual meeting of our Association.

These bills are not given as complete and perfect, but merely as furnishing a proper ground for intelligent discussion and progress.

Although the subject of a uniformity of commercial paper in all interstate transactions was not in terms referred to this Committee, it is so intimately connected with the particular topic they were directed to consider that the Committee have deemed it their duty to direct the attention of the Association to the bill to secure such uniformity, which was prepared by a member of the Committee for the American Bankers' Association and introduced in Congress by the late Judge Poland, in whose death since the last meeting of the Association we are called to mourn the loss of so good a friend and one so highly esteemed and so affectionately regarded by us all. His warm support of the measure is one more important service for which both the profession and the country are indebted to him. The Committee recommend the adoption of the following resolution:

"*Resolved*, That the report of the Committee on Commercial Law be adopted, and that the Committee be empowered to take such action on behalf of the American Bar Association as they may deem necessary or expedient to secure the legislation recommended in their report.

The President:

The report is now open for discussion.

William E. Earle, of the District of Columbia:

I move that the consideration of that report be made the special order for our next meeting, immediately following the annual address. It is a very important and interesting report, and I do not think that in the short time left to us today we can consider it in such a manner as would enable us to reach a satisfactory conclusion about it. It covers a great deal of ground, and we had better let it lay over for another year.

Egbert Whittaker:

Seconded the motion, and it was adopted.

The President:

Miscellaneous business is now in order.

C. C. Bonney, of Illinois:

I have received from Professor Baldwin a resolution with a request that I offer it in his behalf and ask its reference to the Committee on Jurisprudence and Law Reform. With your permission I will read the resolution:

"*Resolved,* That the Committee on Jurisprudence and Law Reform be instructed to inquire and report at the next meeting whether it would not be desirable to promote the enactment in the several States of some uniform law (and, if so, in what form) to regulate the marriage of their citizens in foreign countries, and the proper authentication and registration of such marriages in this country."

Nicholas Van Slyck:

Moved the adoption of that resolution, and it was adopted.

Johnson T. Platt, of Connecticut:

Offered the following resolution:

"*Resolved,* That the President of the Association be and he is hereby requested to appoint a special committee of three members to inquire and report as to what, if anything, can be done to secure a better expression of the legislative intention in framing public statutes."

The resolution was adopted.

Walter George Smith, of Pennsylvania:

On behalf of Judge Hoadly, of New York, whose engagements were of such a character that he was unable to attend this meeting at the last moment, I desire to introduce a resolution, and after doing so I will submit the reasons that he gave me in writing, moving him to that thought:

"*Resolved*, That in all courts of last resort in which written or printed briefs are required from counsel, such briefs should be required to be exchanged long enough before the submission of the cause to enable counsel on each side to examine and reply, either in writing or in print, to the brief of his adversary."

I will now submit, with your permission, the reasons that the suggester of the resolution has to offer:

"The importance of a rule of this kind has been very strongly impressed upon me in my practice in courts of last resort. In this State briefs are exchanged at the moment of going into the oral argument, and no sooner. It is manifest that the Court of Appeals loses all the advantage it would have if counsel were familiar with the views of their adversary. Where the case has been thoroughly and well tried in the special and general term, and the same counsel present the case to the Court of Appeals, this difficulty is obviated. But it often happens that counsel argue in the court of last resort who come into the case after its removal to that tribunal, and who are familiar only with the printed record and have not heard the debate of the other side.

"In Washington, as you are well aware, the Supreme Court of the United States require the brief of the appellee or plaintiff in error to be filed six days, and that of his adversary three days, before the hearing—a rule which, in fact, is more often honored by its breach than its compliance, and which is entirely inadequate to produce the result I have in mind, namely: That the courts should be assisted by a

thorough preparation on both sides founded on time for studying the adversary's views.

"In the olden times, when the Supreme Court of the United States was attended by Wirt, Pinckney, Walter Jones, and Reverdy Johnson, and other resident counsel only, these gentlemen, being in Washington or Baltimore, might, under the rule, familiarize themselves with their adversaries' views during the six days or three days permitted by the rule, so as to discuss orally, with competent knowledge, the antagonist's position. As the bar of the Supreme Court of the United States is now constituted, gentlemen coming from great distances, in answer to a telegram from the clerk, reach the court the night before the cause is to be heard, and they are compelled to go into trial on their previous preparation without knowing what has occurred during the six days or three days prior to the date of the hearing. If the time were enlarged to ten, twenty, or thirty days, it seems to me the cause of justice would be greatly facilitated.

"The rule in Ohio requires that 'a copy of the printed record and brief or argument shall be furnished to the opposite counsel within a reasonable time before the cause shall be heard.'

"Under this rule, my own practice always has been, and this is (I think) the general practice throughout the State, to exchange briefs long enough in advance to enable counsel to reply, or, at least, to make intelligent criticism at the time of the oral argument. Oral arguments, however, are not resorted to in Ohio as much as they ought to be, and this fact modifies the effect of the rule.

"I am not familiar with the practice in other States, but I am convinced, from what I have heard from gentlemen living in other States, that the evil of submission to the courts of last resort of causes without sufficient prior knowledge on the part of counsel of the views of their adversary is widespread.

"Of course, I am looking at this question entirely from

the standpoint of the court and the interests of justice. There are cases in which, beyond a doubt, it helps a lawyer to hide his brief from his adversary, and only lawyers who are willing to resort to this species of malpractice (for such I cannot help calling it) would object to the passage of this resolution.

"In my opinion the interests of justice will be furthered by the adoption of the resolution I have suggested, provided the evil is as great as I think it is."

William Allen Butler, of New York:

Moved that the resolution be referred to the Committee of Judicial Administration, and the motion was adopted.

W. B. Webb, of the District of Columbia:

Mr. President, to inaugurate the celebration of the Centennial Anniversary of the Institution of Constitutional Government in the Western Hemisphere, which is to take place in 1889, in a proper manner we desire to offer what I shall read to this Association. In the city of New York, for some time past, preparations have been going on toward making a national celebration of this one hundredth anniversary of the adoption of the Constitution of the United States. The Senate of the United States has referred the matter to a special Committee, and that Committee has expressed very favorable opinions toward this national celebration. There are sixteen Republics in America, all of which, nearly, have modeled their Constitutions upon the Constitution of the United States. From nearly every one of those we have had letters signifying their desire to unite in this national celebration. We have had a resolution from several Conventions in the country to the same effect. We think that this body of representative lawyers could do a great thing toward that celebration if they would adopt resolutions urging this celebration at the Capital City of the country. I therefore offer the following resolutions:

"WHEREAS, It is proposed to celebrate at our National Capital, in 1889, the One Hundredth Anniversary of the Inauguration of Constitutional Government in the Western

Hemisphere, which celebration is intended to be a joint tribute by the sixteen American Republics to the Constitution of the parent Republic—the United States;

"WHEREAS, It is proposed that said celebration be under the auspices and control of the General Government, viz.: a Commission of nine, three to be appointed by the President of the United States, three by the President of the Senate, and three by the Speaker of the House of Representatives:

"*Resolved*, That the American Bar Association favors this patriotic movement, and commends it as a dignified and useful way of celebrating the Centennial of the Constitution;

"*Resolved*, That the Secretary be instructed to send a copy of these resolutions to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives."

C. C. Bonney:

With very great pleasure, Mr. President, I second the resolutions which have just been read.

They were adopted.

R. L. Morris, of Tennessee:

I offer the following resolution:

"*Resolved*, That we recommend to Congress the passage of the bill pending at its last adjournment to increase the salaries of District Court Judges of the United States to five thousand dollars, and that we respectfully request our Senators and Representatives in Congress to support that bill and urge its passage."

The President:

If there be no objection, the resolution will be referred to the Committee on Judicial Administration and Remedial Procedure.

Charles Borcherling, of New Jersey:

A resolution offered by Mr. Smith, Mr. President, made a suggestion upon which it would be expedient for this Association to take immediate action, and to which its immediate attention is desirable. The working of this Association as it now

stands is that resolutions are referred to the proper committees. The committees at great labor make their reports at the following session. Those reports were not printed heretofore, as far as I know. At this session we find them distributed the very moment the chairman of that committee reads the report. What is the consequence? Here we had yesterday a very important matter in regard to which it was stated by some member that there was no resolution to look at, and therefore very much time was spent, and members argued upon subjects not within the purview of that resolution. Under those circumstances, and taking the Committee on Commercial Law, whose report is now again postponed until the next session, by which time, unless action is taken as I now very respectfully submit, most of that report will be lost sight of. I therefore ask that the order of business be changed in this particular: That all reports be printed and distributed among the members before the Association meets, or on the first day of the session, and that the reading of the reports be dispensed with hereafter, because it is assumed then that every member is familiar with their contents. By that means it seems to me that much valuable time may be saved, and in some instances we may listen to matters and arguments in point.

The Secretary:

Will the gentleman be kind enough to formulate that in the shape of an amendment to the By-Laws, so that the Secretary will know his duty and make it a permanent rule?

Charles Borcherling:

I will do that.

Charles S. Bradley, of Rhode Island:

I suggest that not only the report of the Committee, but all that the Committee ask the Association to adopt, shall be printed also. I ask the gentleman from New Jersey to incorporate that in his amendment.

The President:

I understand that the report of the Committee would embrace everything that they recommend.

Charles S. Bradley:

My suggestion is that the report of the Committee and whatever the Committee ask the body to adopt or approve of should be put in print and distributed among the members.

The President:

Of course, Mr. Borcherling, in preparing your amendment you understand that Judge Bradley, of Rhode Island, suggests that you add the recommendations that the Committee make to the body for adoption.

Charles Borcherling:

Yes, sir. Mr. President, I have been handed a resolution by Mr. Barclay, of St. Louis, which embraces all that I suggested, and I therefore offer this resolution now:

"Amend By-Law XII by adding: And any such report containing any recommendation for action on the part of the Association shall be printed, and shall be distributed by mail by the Secretary to all the members of the Association at least thirty days before the annual meeting at which such report is proposed to be submitted."

The President:

I would suggest that thirty days probably would be too long.

Charles Borcherling:

I will change it to fifteen days. I will offer the resolution, changing it to fifteen days instead of thirty.

The resolution was adopted.

The Secretary;

I would announce that the number of persons already registered is one hundred and forty, which a little exceeds that of any previous meeting.

J. R. Johnston, of Ohio;

Mr. President, I offer the following resolution;

"*Resolved,* That the Committee on Jurisprudence and Law Reform be requested to consider and report at the next annual

meeting what legislation, if any, it may deem necessary to correct the irregularities in and evils growing out of the present laws relating to marriage and divorce."

The resolution was adopted.

The President:

There being no other business before the Association, I now declare this meeting adjourned *sine die.*

EDWARD OTIS HINKLEY,
Secretary.

REPORT

OF THE

TREASURER.

Dr.

To balance from last report, ...	$1,786 50	
cash received—dues of members, ...	3,335 00	
" " —sale of Transactions, ...	14 50	
		$5,136 00

Cr.

1886.			
Aug. 19.	By John Hinkley, expressage, etc., . . .	$11 50	
19.	posting notices of meeting, ...	2 00	
19.	C. A. Morrison, stenographer, on account, ...	40 00	
19.	stationery, etc., ninth meeting, . . .	4 75	
20.	Putnam's Music Hall, ninth meeting,	120 00	
20.	janitor Music Hall, ...	5 00	
20.	incidental expenses of ninth dinner, .	20 00	
21.	Grand Union Hotel, on account of ninth dinner, ...	150 00	
Sept. 17.	type-writing annual address, ...	6 84	
18.	C. H. Butler, expenses in connection with reporting ninth annual meeting, ...	71 22	
18.	C. A. Morrison, stenographer, in full,	56 00	
Nov. 12.	Grand Union Hotel, balance of account, ninth dinner, ...	326 50	
Dec. 7.	Sharp Printing Company, printing report of C. Parker, a member of special committee, ...	25 00	
	Amounts carried forward,	$838 81	$5,136 00

1886.		Amounts brought forward,	$838 81	$5,136 00
Dec.	21.	Murphy's Sons, blank book, ...	7 00	
1887.				
Mch.	4.	T. & J. W. Johnson, mailing-cases for reports, ...	8 00	
	10.	expenses in distributing ninth report,	179 51	
	10.	letter file, ...	1 00	
May	2.	Dando Printing and Publishing Company, printing ninth annual report,	1,525 20	
	2.	Dando Printing and Publishing Company, binding ninth report, mailing-cases, printing extra copies of papers read, etc., ...	358 99	
	7.	Dando Printing and Publishing Company, general printing, stamped envelopes, etc., to date, ...	58 80	
	7.	delivery of ninth reports in New York City, ...	2 03	
July	2.	W. F. Murphy's Sons, receipt books,	6 00	
	2.	Sam'l Wagner, expenses as member of Committee on Commercial Law,	15 00	
	4.	Geo. A. Mercer, expenses as member of Committee on Commercial Law, .	48 70	
	4.	C. C. Bonney, expenses as member of Committee on Commercial Law, .	58 65	
	5.	session laws of Tennessee, ...	1 50	
Aug.	4.	Allen, Lane & Scott, printing memorial of Hon. Jno. W. Stevenson, .	38 50	
	8.	T. B. Keogh, postage, etc., ...	4 00	
	9.	Dando Printing and Publishing Company, general printing, stamped envelopes, etc., to date, ...	52 77	
	9.	Cochran, Goddard & Co., expenses of tenth dinner, ...	32 50	
	9.	Allen, Lane & Scott, printing circulars, ...	2 50	
	9.	H. C. Esling, Treasurer's clerk, for year ending August, 1887, ...	250 00	
	10.	session laws of Nevada and West Virginia, ...	3 03	
	10.	expressage, telegrams, boxing etc., for year, ...	18 41	
	10.	postage stamps, ...	5 00	
		Balance, ...	1,620 10	
				$5,136 00

Which balance consists of—

Amount to credit of Treasurer in Commonwealth National Bank, Philadelphia, ...	$1,606 03
Cash on hand, ...	14 07
	$1,620 10

Respectfully submitted,

FRANCIS RAWLE,
Treasurer.

SARATOGA SPRINGS, August 17th, 1887.

Audited and found correct.

WILLIAM P. WELLS,
JOHNSON T. PLATT,
Auditing Committee.

August 17th, 1887.

LIST OF MEMBERS ELECTED.

ALABAMA.

HALL, FRANK A., ... Montgomery.

ARKANSAS.

GARLAND, AUGUSTUS H., ... Little Rock.

CONNECTICUT.

GUNN, GEORGE M., ... Milford.

DELAWARE.

HARRINGTON, AUSTIN, ... Wilmington.
LORE, CHARLES B., ... Wilmington.
NICHOLSON, JOHN R., ... Dover.
PORTER, WILLARD HALL, ... Wilmington.

DISTRICT OF COLUMBIA.

BERRY, WALTER V. R., ... Washington.
BLAIR, JOHN S., ... Washington.
LEE, BLAIR, ... Washington.

GEORGIA.

BARTLETT, CHARLES L., ... Macon.
CALHOUN, PATRICK, ... Atlanta.
ERWIN, R. G., ... Savannah.
MYNATT, PRYOR L., ... Atlanta.
NEWMAN, W. T., ... Atlanta.
SIMMONS, THOMAS J., ... Macon.
SMITH, HOKE, ... Atlanta.
WRIGHT, BOYKIN, ... Augusta.

ILLINOIS.

HURD, HARVEY B., ... Chicago.

KANSAS.

DILLON, HIRAM P., ... Topeka.

LOUISIANA.

Ellis, E. John, ... New Orleans.
Eustis, James B., ... New Orleans.
Forman, Benjamin Rice, ... New Orleans.
Gibson, Randall Lee, ... New Orleans.
Houston, William T., ... New Orleans.
Robinson, N. T. N., ... New Orleans.
Rost, Emile, ... New Orleans.

MARYLAND.

Donaldson, John J., ... Baltimore.

MASSACHUSETTS.

Dillaway, W. E. R., ... Boston.

MICHIGAN.

Donelly, John C., ... Detroit.
Moore, George Wm., ... Detroit.

MINNESOTA.

Ingersoll, Frederick G., ... St. Paul.

MISSOURI.

Glover, John M., ... St. Louis.
McDougal, Henry C., ... Kansas City.

MONTANA TY.

Cullen, William E., ... Helena.
Toole, Edwin W., ... Helena.
Wade, Decius S., ... Helena.

NEVADA.

Leonard, Orville R., ... Carson City.

NEW JERSEY.

Bedle, Joseph D., ... Jersey City.
Boggs, Herbert, ... Newark.
Grant, Alexander, Jr., ... Newark.

NEW YORK.

Clinton, Henry L., ... New York.
McCook, John J., ... New York.
Potter, Frederick, ... New York.
Ward, Henry Galbraith, ... New York.

OHIO.

CHALKER, NEWTON, ... Akron.
YOUNG, GEORGE R., ... Dayton.
ZUCKER, PETER, ... Cleveland.

PENNSYLVANIA.

CONARROE, GEORGE M., ... Philadelphia.
DORRANCE, J. FORD, ... Meadville.
FISHER, WILLIAM RIGHTER, ... Philadelphia.
LEAR, HENRY, ... Doylestown.
MERCUR, RODNEY A., ... Towanda.
MILLER, E. SPENCER, ... Philadelphia.
PORTER, WILLIAM W., ... Philadelphia.
REMAK, STEPHEN S., ... Philadelphia.
SULZBERGER, MAYER, ... Philadelphia.
TODD, M. HAMPTON, ... Philadelphia.

SOUTH CAROLINA.

LORD, SAMUEL, ... Charleston.
ORR, JAMES L., ... Greenville.
PARKER, WILLIAM H., ... Abbeville.

TENNESSEE.

MERRITT, A. G., ... Nashville.
MORRIS, ROBERT L., ... Nashville.

VERMONT.

TAFT, ELIHU B., ... Burlington.

VIRGINIA.

CROCKER, JAMES F., ... Portsmouth.
HUNTON, EPPA, ... Warrenton.
KENT, LINDEN, ... P. O., Washington, D. C.
THOM, ALFRED, ... Norfolk.
WATTS, LEGH R., ... Portsmouth.

WISCONSIN.

FLANDERS, JAMES G., ... Milwaukee.

RECAPITULATION.

Alabama,	1	Missouri,	2
Arkansas,	1	Montana Ty.,	3
Connecticut,	1	Nevada,	1
Delaware,	4	New Jersey,	3
District of Columbia,	3	New York,	4
Georgia,	8	Ohio,	3
Illinois,	1	Pennsylvania,	10
Kansas,	1	South Carolina,	3
Louisiana,	7	Tennessee,	2
Maryland,	1	Vermont,	1
Massachusetts,	1	Virginia,	5
Michigan,	2	Wisconsin,	1
Minnesota,	1	Total,	70

MEMORANDUM.

The Annual Dinner was given on Friday evening, August 19th, at the Grand Union Hotel. Thomas J. Semmes, of Louisiana, presided. One hundred and eight members were present.

LIST OF PRESIDENTS.

1. 1878–79.—James O. Broadhead, ... St. Louis, Missouri.
2. 1879–80.—Benjamin H. Bristow, ... New York, New York.
3. 1880–81.—Edward J. Phelps, ... Burlington, Vermont.
4. 1881–82.—Clarkson N. Potter, ... New York, New York.
5. 1882–83.—Alexander R. Lawton, . . . Savannah, Georgia.
6. 1883–84.—Cortlandt Parker, ... Newark, New Jersey.
7. 1884–85.—John W. Stevenson, ... Covington, Kentucky.
8. 1885–86.—William Allen Butler, . . . New York, New York.
9. 1886–87.—Thomas J. Semmes, ... New Orleans, Louisiana.
10. 1887–88.—George G. Wright, ... Des Moines, Iowa.

CONSTITUTION.

NAME AND OBJECT.

ARTICLE I.—This Association shall be known as "THE AMERICAN BAR ASSOCIATION." Its object shall be to advance the science of jurisprudence, promote the administration of justice and uniformity of legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar.

QUALIFICATIONS FOR MEMBERSHIP.

ARTICLE II.—Any person shall be eligible to membership in this Association who shall be, and shall, for five years next preceding, have been, a member in good standing of the Bar of any State, and who shall also be nominated as hereinafter provided.

OFFICERS AND COMMITTEES.

ARTICLE III.—The following officers shall be elected at each Annual Meeting for the year ensuing: A President (the same person shall not be elected President two years in succession); one Vice-President from each State; a Secretary; a Treasurer; a Council, consisting of one member from each State (the Council shall be a standing committee on nomina-

tions for office); an Executive Committee, which shall consist of the President, the last ex-President, the Secretary, and the Treasurer, all of whom shall be *ex officio* members, together with three other members, to be chosen by the Association, and the President, and in his absence the ex-President shall be the Chairman of the Committee.

The following committees shall be annually appointed by the President, for the year ensuing, and shall consist of five members each:

On Jurisprudence and Law Reform;
On Judicial Administration and Remedial Procedure;
On Legal Education and Admissions to the Bar;
On Commercial Law;
On International Law;
On Publications;
On Grievances.

A majority of those members of any committee, including the Council, who may be present at any meeting of the Association, shall constitute a quorum of such committee for the purposes of such meeting.

The Vice-President for each State, and not less than two other members from such State, to be annually elected, shall constitute a Local Council for such State, to which shall be referred all applications for membership from such State. The Vice-President shall be, *ex officio*, Chairman of such Council.

A committee of three, of whom the Secretary shall always be one, shall be appointed by the President at each Annual Meeting of the Association, whose duty it shall be to report to the next meeting the names of all members who shall, in the interval, have died, with such notices of them as shall, in the discretion of the committee, be proper.

It shall be the duty of the Vice-President from each State and Territory to report the deaths of members within the same to the said committee.

ELECTION OF MEMBERS.

ARTICLE IV.—All nominations for membership shall be made by the Local Council of the State to the Bar of which the persons nominated belong. Such nominations must be transmitted in writing to the Chairman of the General Council, and approved by the Council, on vote by ballot.

The General Council may also nominate members from States having no Local Council, and at the Annual Meeting of the Association, in the absence of all members of the Local Council of any State; *Provided,* That no nomination shall be considered by the General Council, unless accompanied by a statement in writing by at least three members of the Association from the same State with the person nominated, or, in their absence, by members from a neighboring State or States, to the effect that the person nominated has the qualifications required by the Constitution, and desires to become a member of the Association, and recommending his admission as a member.

All nominations thus made or approved shall be reported by the Council to the Association, and all whose names are reported shall thereupon become members of the Association; *Provided,* That if any member demand a vote upon any name thus reported, the Association shall thereupon vote thereon by ballot.

Several nominees, if from the same State, may be voted for upon the same ballot; and in such case placing the word "No" against any name or names upon the ticket shall be deemed a negative vote against such name or names, and against those only. Five negative votes shall suffice to defeat an election.

ARTICLE V.—All members of the Conference adopting the Constitution, and all persons elected by them upon the recommendation of the Committee of five appointed by such Conference, shall become members of the Association upon payment of the annual dues for the current year herein provided for.

BY-LAWS.

ARTICLE VI.—By-laws may be adopted at any Annual Meeting of the Association by a majority of the members present. It shall be the duty of the Executive Committee, without delay, to adopt suitable by-laws, which shall be in force until rescinded by the Association.

DUES.

ARTICLE VII.—Each member shall pay five dollars to the Treasurer as annual dues, and no person shall be qualified to exercise any privilege of membership who is in default. Such dues shall be payable, and the payment thereof enforced, as may be provided by the By-Laws. Members shall be entitled to receive all publications of the Association free of charge.

ANNUAL ADDRESS.

ARTICLE VIII.—The President shall open each Annual Meeting of the Association with an address, in which he shall communicate the most noteworthy changes in statute law on points of general interest made in the several States and by Congress during the preceding year. It shall be the duty of the member of the General Council from each State to report to the President, on or before the first day of May, annually, any such legislation in his State.

ANNUAL MEETINGS.

ARTICLE IX.—This Association shall meet annually in the month of July or August, at such time and place as the Executive Committee may select, and those present at such meeting shall constitute a quorum.

AMENDMENTS.

ARTICLE X.—This Constitution may be altered or amended by a vote of three-fourths of the members present at any

Annual Meeting, but no such change shall be made at any meeting at which less than thirty members are present.

CONSTRUCTION.

ARTICLE XI.—The word "*State*," whenever used in this Constitution, shall be deemed to be equivalent to *State, Territory*, and the *District of Columbia*.

BY-LAWS.

MEETINGS OF THE ASSOCIATION.

I.—The Executive Committee, at its first meeting after each Annual Meeting, shall select some person to make an address at the next Annual Meeting, and not exceeding six members of the Association to read papers.

II.—The order of exercises at the Annual Meeting shall be as follows:

(*a*) Opening address of the President.
(*b*) Nominations and Election of Members.
(*c*) Election of the General Council.
(*d*) Reports of Secretary and Treasurer.
(*e*) Report of Executive Committee.
(*f*) Reports of Standing Committees:
- On Jurisprudence and Law Reform;
- On Judicial Administration and Remedial Procedure;
- On Legal Education and Admissions to the Bar;
- On Commercial Law;
- On International Law;
- On Publications;
- On Grievances.

(*g*) Reports of Special Committees.
(*h*) The Nomination of Officers.
(*i*) Miscellaneous Business.
(*j*) The Election of Officers.

The address, to be delivered by a person invited by the Executive Committee, shall be made at the morning session of the second day of the Annual Meeting.

The reading and delivering of essays and papers shall be on the same day, or at such other time as the Executive Committee may determine.

III.—No person shall speak more than ten minutes at a time or more than twice on one subject.

A stenographer shall be employed at each Annual Meeting.

IV.—Each State Bar Association may annually appoint delegates, not exceeding three in number, to the next meeting of the Association. In States where no State Bar Association exists, any city or county Bar Association may appoint such delegates not exceeding two in number. Such delegates shall be entitled to all the privileges of membership at and during the said meeting.

V.—At any of the meetings of the Association, members of the Bar of any foreign country or of any State who are not members of the Association may be admitted to the privileges of the floor during such meeting.

VI.—All papers read before the Association shall be lodged with the Secretary. The annual address of the President, the reports of committees, and all proceedings at the Annual Meeting shall be printed; but no other address made or paper read or presented shall be printed, except by order of the Committee on Publications.

Extra copies of reports, addresses, and papers read before the Association may be printed by the Committee on Publications for the use of their authors, not exceeding two hundred copies to each of such authors.

The Secretary and the Chairman of the Executive Committee shall endeavor to arrange with the Smithsonian In-

stitution, or otherwise, a system of exchanges by which our *Transactions* can be annually exchanged with those of other associations in foreign countries interested in jurisprudence or governmental affairs; and also that the Secretary exchange our *Transactions* with those of the State and local bar associations; and that all books thus acquired be bound and deposited in the charge of the New York City Bar Association, subject to the call of this Association, if it ever desires to withdraw or consult them, if the latter Association agrees to such deposit.

The Secretary shall send one copy of the Report of the proceedings of this Association to the President of the United States, and to each of the judges of the Supreme Court thereof, and to the Library of the State Department, and of the Department of Justice thereof, and to the Library of Congress, and the Library of the Supreme Court thereof, and to the Governor, and to the Chief Judge of the court of last resort of each State, and to the State Librarian thereof, and to all public law libraries, and other principal public and college libraries in the United States, and to such other persons or bodies as the Executive Committee may direct.

No resolution complimentary to an officer or member for any service performed, paper read, or address delivered shall be considered by the Association.

OFFICERS AND COMMITTEES.

VII.—The terms of office of all officers elected at any Annual Meeting shall commence at the adjournment of such meeting, except the Council, whose term of office shall commence immediately upon their election.

VIII.—The President shall appoint all committees, except the Committee on Publications, within thirty days after the Annual Meeting, and shall announce them to the Secretary, and the Secretary shall promptly give notice to the persons

appointed. The Committee on Publications shall be appointed on the first day of each meeting.

IX.—The Treasurer's Report shall be examined and audited annually, before its presentation to the Association, by two members to be appointed by the Chairman of the Executive Committee.

X.—The Council and all standing committees shall meet on the day preceding each Annual Meeting, at the place where the same is to be held, at such hour as their respective chairmen shall appoint. If at any Annual Meeting of the Association any member of any committee shall be absent, the vacancy may be filled by the members of the committee present.

The Secretary of the Association shall be the Secretary of the Council.

XI.—The Committee on Publications shall also meet within one month after each Annual Meeting, at such time and place as the chairman shall appoint.

XII.—Special meetings of any committee shall be held at such times and places as the chairman thereof may appoint. Reasonable notice shall be given by him to each member by mail.

The traveling and other necessary expenses incurred by any committee, standing or special, for meetings of such committee, during the interval between the Annual Meetings of the Association, shall be paid by the Treasurer, on the approval and by the order of the Executive Committee.

All committees may have their reports printed by the Secretary before the Annual Meeting of the Association; and any such report, containing any recommendation for action on the part of the Association, shall be printed and shall be distributed by mail by the Secretary to all the members

of the Association at least fifteen days before the Annual Meeting at which such report is proposed to be submitted.

ANNUAL DUES.

XIII.—The Annual dues shall be payable at the Annual Meeting in advance. If any member neglects to pay them for any year at or before the next Annual Meeting, he shall cease to be a member. The Treasurer shall give notice of this by-law, within sixty days after each meeting, to all members in default.

PRESIDENT,

GEORGE G. WRIGHT,

Des Moines, Iowa.

SECRETARY,

EDWARD OTIS HINKLEY,

215, *North Charles Street, Baltimore, Maryland.*

TREASURER,

FRANCIS RAWLE,

402, *Walnut Street, Philadelphia, Pennsylvania.*

EXECUTIVE COMMITTEE,

Ex officio.

GEORGE G. WRIGHT, PRESIDENT,

THOMAS J. SEMMES, LAST PRESIDENT,

EDWARD OTIS HINKLEY, SECRETARY,

FRANCIS RAWLE, TREASURER.

Elected Members.

SIMEON E. BALDWIN, *New Haven, Connecticut,*

C. C. BONNEY, *Chicago, Illinois,*

GEORGE A. MERCER, *Savannah, Georgia.*

GENERAL COUNCIL.

Alabama,	HENRY C. SEMPLE.
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HITCHCOCK, HENRY, ... St. Louis, Mo.
HOADLY, GEORGE, ... New York, N. Y.
HODGE, NOAH, ... San Diego, Cal.
HOFFMAN, CHARLES W., ... Washington, D. C.
HOLMES, GEORGE F., ... Portland, Me.
HOLT, GEORGE C., ... New York, N. Y.
HOOKER, DAVID G., ... Milwaukee, Wis.
HORD, OSCAR B., ... Indianapolis, Ind.
HORNBLOWER, WILLIAM B., ... New York, N. Y.
HORNER, JOHN J., ... Helena, Ark.
HORTON, S. DANA, ... Pomeroy, O.
HOSMER, GEORGE S., ... Detroit, Mich.
HOUGH, WARWICK, ... St. Louis, Mo.
HOUK, GEORGE W., ... Dayton, O.
HOUSTON, LOCK E., ... Aberdeen, Miss.
HOUSTON, WILLIAM T., ... New Orleans, La.
HOWE, JOHN D., ... St. Paul, Minn.
HOWE, W. W., ... New Orleans, La.
HOWES, L. W., ... Boston, Mass.
HOWRY, CHARLES B., ... Oxford, Miss.
HUBBARD, THOMAS H., ... New York, N. Y.
HUDD, THOMAS R., ... Green Bay, Wis.
HUEY, SAMUEL B., ... Philadelphia, Pa.
HUNT, CARLETON, ... New Orleans, La.
HUNT, SAMUEL F., ... Cincinnati, O.
HUNTON, EPPA, ... Warrenton, Va.
HURD, FRANCIS W., ... Boston, Mass.
HURD, HARVEY B., ... Chicago, Ill.
HUTCHINS, WALDO, ... New York, N. Y.
HUTCHINSON, JOHN A., ... Parkersburg, W. Va.
HUGHES, THOMAS, ... Baltimore, Md.
HYDE, ALVAN P., ... Hartford, Conn.
INGERSOLL, FREDERICK G., ... St. Paul, Minn.
ISAACS, M. S., ... New York, N. Y.
JACKSON, A. A., ... Janesville, Wis.
JACKSON, HENRY, ... Atlanta, Ga.

JENKINS, JAMES G., ... Milwaukee, Wis.
JEWETT, HUGH J., ... New York, N. Y.
JOHNSON, BYRON B., ... Waltham, Mass.
JOHNSON, EDGAR M., ... New York, N. Y.
JOHNSON, WILLIAM E., ... Woodstock, Va.
JOHNSTON, JAMES M., ... Washington, D. C.
JOHNSTON, JOSEPH R., ... Youngstown, O.
JOHNSTONE, GEORGE, ... Newbury, S. C.
JONES, ASAHEL W., ... Youngstown, O.
JONES, CHARLES C., JR., ... Augusta, Ga.
JONES, ISAAC D., ... Baltimore, Md.
JONES, LEONARD A., ... Boston, Mass.
JUDSON, FREDERICK N., ... St. Louis, Mo.
KAERCHER, GEORGE R., ... Philadelphia, Pa.
KAUFFMAN, A. J., ... Columbia, Pa.
KAUFFMAN, B. F., ... Des Moines, Ia.
KEASBEY, ANTHONY Q., ... Newark, N. J.
KEHR, EDWARD C., ... St. Louis, Mo.
KELLOGG, STEPHEN W., ... Waterbury, Conn.
KELLEY, HENRY B., ... New Orleans, La.
KENT, CHARLES A., ... Detroit, Mich.
KENT, LINDEN, ... P. O. Washington, D. C.
KEOGH, THOMAS B, ... Greensboro, N. C.
KERNAN, FRANCIS, ... Utica, N. Y.
KING, RUFUS, ... Cincinnati, O.
KNIGHT, EDWARD B., ... Charleston, W. Va.
KNOTT, A. LEO, ... Baltimore, Md.
KOERNER, GUSTAVE, ... Belleville, Ill.
KRUTTSCHNITT, ERNEST B., ... New Orleans, La.
KULP, GEORGE B., ... Wilkesbarre, Pa.
LADD, NATH. W., ... Boston, Mass.
LADD, WILLIAM S., ... Lancaster, N. H.
LAMBERTON, C. L., ... New York, N. Y.
LANCASTER, CHARLES C., ... Washington, D. C.
LARNER, JOHN B., ... Washington, D. C.
LATHROP, GARDINER, ... Kansas City, Mo.
LATROBE, JOHN H. B., ... Baltimore, Md.
LAWRENCE, ISAAC, ... Newport, R. I.
LAWTON, ALEXANDER R., ... Savannah, Ga.
LAWTON, ALEXANDER R., JR., ... Savannah, Ga.
LEAR, HENRY, ... Doylestown, Pa.
LEE, BLAIR, ... Washington, D. C.
LEEDS, CHARLES C., ... New York, N. Y.
LEGENDRE, JAMES, ... New Orleans, La.
LEIGH, JOSEPH E., ... Columbus, Miss.

LEONARD, ORVILLE R., ... Carson City, Nev.
LEVI, ALBERT L., ... Minneapolis, Minn.
LEWIS, CHARLTON T., ... New York, N. Y.
LEWIS, JAMES M., ... St. Louis, Mo.
LIBBY, CHARLES F., ... Portland, Me.
LISTER, CHARLES C., ... Philadelphia, Pa.
LITTLE, WILLIAM E., ... Tunkhannock, Pa.
LIVINGSTON, J. B., ... Lancaster, Pa.
LOGAN, THOMAS A., ... Cincinnati, O.
LORD, SAMUEL, ... Charleston, S. C.
LORE, CHARLES B., ... Wilmington, Del.
LOUDON, DEWITT C., ... Georgetown, O.
LOVELY, JOHN A., ... Albert Lea, Minn.
LYON, R. F., ... Macon, Ga.
LYONS, JAMES, ... Richmond, Va.
MACFARLAND, W. W., ... New York, N. Y.
MACKALL, WILLIAM W., JR., ... Savannah, Ga.
MACKOY, WILLIAM H., ... Cincinnati, O.
MACVEAGH, WAYNE, ... Philadelphia, Pa.
MADILL, GEORGE A., ... St. Louis, Mo.
MAGRATH, A. G., ... Charleston, S. C.
MANDERSON, CHARLES F., ... Omaha, Neb.
MARSHALL, CHARLES, ... Baltimore, Md.
MARSHALL, JOSHUA N., ... Lowell, Mass.
MARSTON, GILMAN, ... Exeter, N. H.
MASON, EDWARD G., ... Chicago, Ill.
MASON, JOHN T. (JOHN T. MASON, R.), ... Baltimore, Md.
MASSEY, GEORGE D., ... Dover, Del.
MATHEWS, ALBERT, ... New York, N. Y.
MAXWELL, J. AUDLEY, ... Boston, Mass.
MEDDAUGH, ELIJAH W., ... Detroit, Mich.
MELDRIM, P. W., ... Savannah, Ga.
MELOY, WILLIAM A., ... Washington, D. C.
MERCER, GEORGE A., ... Savannah, Ga.
MERCER, GEORGE G., ... Philadelphia, Pa.
MERCUR, RODNEY A., ... Towanda, Pa.
MERRICK, EDWIN T., ... New Orleans, La.
MERRITT, A. G., ... Nashville, Tenn.
MILBURN, JOHN G., ... Buffalo, N. Y.
MILLER, B. K., ... Milwaukee, Wis.
MILLER, E. SPENCER, ... Philadelphia, Pa.
MILLER, FRANK H., ... Augusta, Ga.
MILLER, H. C., ... New Orleans, La.
MILLER, N. DU BOIS, ... Philadelphia, Pa.
MILLER, WM. K., ... Augusta, Ga.

MITCHELL, JAS. T., ... Philadelphia, Pa.
MOAK, N. C., ... Albany, N. Y.
MONAGHAN, ROBERT E., ... West Chester, Pa.
MONROE, WILLIAM A., ... Boston, Mass.
MONTGOMERY, WILLIAM W., ... Augusta, Ga.
MOORE, GEORGE WILLIAM, ... Detroit, Mich.
MOORE, JOHN M., ... Little Rock, Ark.
MOORE, J. Z., ... Owensboro, Ky.
MOORMAN, H. C., ... Somerville, Tenn.
MOOT, ADELBERT, ... Buffalo, N. Y.
MORDECAI, T. MOULTRIE, ... Charleston, S. C.
MORRIS, EFFINGHAM B., ... Philadelphia, Pa.
MORRIS, M. F., ... Washington, D. C.
MORRIS, ROBERT L., ... Nashville, Tenn.
MORSE, A. PORTER, ... Washington, D. C.
MUNGER, WARREN, ... Dayton, O.
MUNNIKHUYSEN, HOWARD, ... Baltimore, Md.
MUNSON, C. LA RUE, ... Williamsport, Pa.
MURPHY, D. F., ... Washington, D. C.
MURPHY, THEODORE D., ... Woodstock, Ill.
MURRAY, R. B., ... Youngstown, O.
MYERS, JAMES J., ... Boston, Mass.
MYERS, NATHANIEL, ... New York, N. Y.
MYNATT, PRIOR L., ... Atlanta, Ga.
MCATEE, JOHN L., ... Caldwell, Kan.
MCCALEB, E. HOWARD, ... New Orleans, La.
MCCAMMON, JOSEPH K., ... Washington, D. C.
MCCARTER, THOMAS N., ... Newark, N. J.
MCCLINTOCK, ANDREW H., ... Wilkesbarre, Pa.
MCCLINTOCK, ANDREW T., ... Wilkesbarre, Pa.
MCCLINTOCK, WILLIAM T., ... Cincinnati, O.
MCCOOK, JOHN J., ... New York, N. Y.
MCCRADY, EDWARD, JR., ... Charleston, S. C.
MCCULLOUGH, JOHN, ... N. Bennington, Vt.
MCDOUGAL, HENRY C., ... Kansas City, Mo.
MCFARLAND, L. B., ... Memphis, Tenn.
MCINTOSH, DAVID G., ... Towsontown, Md.
MCLEARY, J. H., ... Bozeman, Mon.
MCNEAL, ALBERT T., ... Bolivar, Tenn.
NASH, STEPHEN P., ... New York, N. Y.
NEBEKER, LUCAS, ... Wellington, Kan.
NELSON, HOMER A , ... Poughkeepsie, N. Y.
NETTLES, CLEMENT S., ... Darlington, S. C.
NEWMAN, EMILE, ... Savannah, Ga.
NEWMAN, W. T., ... Atlanta, Ga.

NICHOLSON, JOHN R., ... Dover, Del.
NICKOLS, GEORGE L., JR., ... New York, N. Y.
NICOLL, DELANCEY, ... New York, N. Y.
NOBLE, GUY C., ... St. Albans, Vt.
NOBLE, JOHN W., ... St. Louis, Mo.
NORTH, E. D., ... Lancaster, Pa.
NORTH, HUGH M., ... Columbia, Pa.
O'BRIEN, THOMAS J., ... Grand Rapids, Mich.
OLMSTEAD, AARON B., ... Saratoga Springs, N. Y.
OLMSTEAD, DWIGHT H., ... New York, N. Y.
ORR, JAMES L., ... Greenville, S. C.
OSBORNE, EDWIN S., ... Wilkesbarre, Pa.
OVIATT, EDWARD, ... Akron, O.
OWENS, GEORGE W., ... Savannah, Ga.
PACKER, JOHN B., ... Sunbury, Pa.
PAGE, HENRY F., ... Circleville, O.
PAGE, LEGH R., ... Richmond, Va.
PALMER, HENRY W., ... Wilkesbarre, Pa.
PALMER, JOHN M., ... Springfield, Ill.
PARDEE, DON A., ... New Orleans, La.
PARDEE, HENRY E., ... New Haven, Conn.
PARKER, AMASA J., ... Albany, N. Y.
PARKER, CORTLANDT, ... Newark, N. J.
PARKER, JAMES, ... New York, N. Y.
PARKER, R. WAYNE, ... Newark, N. J.
PARKER, WILLIAM H., ... Abbeville, S. C
PARRISH, JOSEPH, ... Philadelphia, Pa.
PARSONS, HENRY C., ... Williamsport, Pa.
PATTERSON, C. STUART, ... Philadelphia, Pa.
PATTERSON, T. ELLIOTT, ... Philadelphia, Pa.
PAUL, NORMAN, ... Woodstock, Vt.
PAYNE, JAMES G., ... Washington, D. C.
PEABODY, CHARLES A., ... New York, N. Y.
PECK, GEORGE R., ... Topeka, Kan.
PECKHAM, FRANCIS B., ... Newport, R. I.
PENDLETON, EDWARD W., ... Detroit, Mich.
PENNYPACKER, CHARLES H., ... West Chester, Pa.
PENNYPACKER, SAMUEL W., ... Philadelphia, Pa.
PERKINS, SAMUEL C., ... Philadelphia, Pa.
PERRY, JOHN H., ... Southport, Conn.
PETTIT, SILAS W., ... Philadelphia, Pa.
PHELPS, EDWARD J., ... Burlington, Vt.
PHELPS, WILLIAM WALTER, ... New York, N. Y.
PIERCE, JAMES O., ... Minneapolis, Minn.
PINNEY, SILUS U., ... Madison, Wis.

PIRTLE, JAMES S., ... Louisville, Ky.
PLATT, JOHNSON T., ... New Haven, Conn.
POCHÉ, F. P., ... New Orleans, La.
PORTER, CHARLES W., ... Montpelier, Vt.
PORTER, WILLARD HALL, ... Wilmington, Del.
PORTER, WILLIAM W., ... Philadelphia, Pa.
POTTER, FREDERICK, ... New York, N. Y.
POTTER, ORLANDO B., ... New York, N. Y.
POWERS, CHARLES E., ... Boston, Mass.
PRATT, WALLACE, ... Kansas City, Mo.
PRICE, J. SERGEANT, ... Philadelphia, Pa.
PRICHARD, FRANK P., ... Philadelphia, Pa.
PRIME, RALPH E., ... Yonkers, N. Y.
PRYOR, ROGER A., ... Brooklyn, N. Y.
PUTNAM, HENRY W., ... Boston, Mass.
RAMSEY, WILLIAM M., ... Cincinnati, O.
RANDALL, E. M., ... Jacksonville, Fla.
RANDOLPH, JOSEPH F., ... Jersey City, N. J.
RANNEY, HENRY C., ... Cleveland, O.
RANNEY, RUFUS P., ... Cleveland, O.
RAWLE, FRANCIS, ... Philadelphia, Pa.
RAWLE, WM. HENRY, ... Philadelphia, Pa.
RAYNOLDS, EDWARD D., ... New Haven, Conn.
REED, HENRY, ... Philadelphia, Pa.
REESE, WILLIAM M., ... Washington, Ga.
REEVE, FELIX A., ... Washington, D. C.
REMAK, STEPHEN S., ... Philadelphia, Pa.
REYNOLDS, SAMUEL H., ... Lancaster, Pa.
RICHARDSON, DANIEL S., ... Lowell, Mass.
RICHARDSON, GEORGE F., ... Lowell, Mass.
RICHEY, AUGUSTUS G., ... Trenton, N. J.
RIPLEY, JAMES M., ... Providence, R. I.
ROBB, SAMUEL, ... Philadelphia, Pa.
ROBERTS, DANIEL, ... Burlington, Vt.
ROBERTS, JOSEPH K., JR., ... Upper Marlboro, Md.
ROBERTSON, WILLIAM J., ... Charlottesville, Va.
ROBINSON, N. T. N., ... New Orleans, La.
ROELKER, WILLIAM G., ... Providence, R. I.
ROGERS, GEORGE W., ... Norristown, Pa.
ROGERS, HENRY WADE, ... Ann Arbor, Mich.
ROGERS, ROBERT LYON, ... Baltimore, Md.
ROGERS, SHERMAN S., ... Buffalo, N. Y.
ROSE, U. M., ... Little Rock, Ark.
ROST, EMILE, ... New Orleans, La.
RUNNELS, JOHN S., ... Des Moines, Ia.

Russell, Charles T., Jr., ... Cambridge, Mass.
Russell, Talcott H., ... New Haven, Conn.
Russell, William G., ... Boston, Mass.
Russell, W. H. H., ... New York, N. Y.
Sanborn, John B., ... St. Paul, Minn.
Sanborn, Walter H., ... St. Paul, Minn.
Sanders, Dallas, ... Philadelphia, Pa.
Sanders, Wilbur F., ... Helena, Mon.
Sanford, Orlin M., ... New York, N. Y.
Saulsbury, Willard, Jr., ... Wilmington, Del.
Scaife, Lauriston L., ... Boston, Mass.
Schenck, Abram V., ... New Brunswick, N. J.
Schley, Bradley G., ... Milwaukee, Wis.
Schoonmaker, Augustus, Jr., ... Kingston, N. Y.
Scott, C. Suydam, ... Lexington, Ky.
Scott, James L., ... Ballston Springs, N. Y.
Searle, George W., ... Boston, Mass.
Sears, Philip H., ... Boston, Mass.
Seibert, W. N., ... New Bloomfield, Pa.
Selden, John, ... Washington, D. C.
Semmes, Thomas J., ... New Orleans, La.
Semple, Henry C., ... Montgomery, Ala.
Semple, Mackensie, ... New York, N. Y.
Sewell, Robert, ... New York, N. Y.
Shack, Ferdinand, ... New York, N. Y.
Sharp, George M., ... Baltimore, Md.
Shattuck, George O., ... Boston, Mass.
Shaw, R. K., ... Marietta, O.
Shepard, Elliot F., ... New York, N. Y.
Sherman, E. B., ... Chicago, Ill.
Shipman, J. G., ... Belvidere, N. J.
Shiras, George, Jr., ... Pittsburgh, Pa.
Shiras, Oliver P., ... Dubuque, Pa.
Shoemaker, L. D., ... Wilkesbarre, Pa.
Shurtliff, S. C., ... Montpelier, Vt.
Simmons, Thomas J., ... Macon, Ga.
Simonton, C. H., ... Charleston, S. C.
Sims, W. H., ... Columbus, Miss.
Smalley, B. B., ... Burlington, Vt.
Smith, Chauncey, ... Boston, Mass.
Smith, Hoke, ... Atlanta, Ga.
Smith, Luther R., ... Mount Sterling, Ala.
Smith, Nelson, ... New York, N. Y.
Smith, Walter George, ... Philadelphia, Pa.
Smythe, Augustine T., ... Charleston, S. C.

SOMMERVILLE, J. B., ... Wheeling, W. Va.
SOUTHARD, CHARLES B., ... Boston, Mass.
SPAULDING, JOHN, ... Boston, Mass.
SPEAR, WILLIAM T., ... Warren, O.
SPEIR, GILBERT M., JR., ... New York, N. Y.
SPRAGUE, E. C., ... Buffalo, N. Y.
SPRING, JOHN L., ... Lebanon, N. H.
STANTON, LEWIS E., ... Hartford, Conn.
STERNE, SIMON, ... New York, N. Y.
STETSON, CHARLES P., ... Bangor, Me.
STEVENS, HIRAM F., ... St. Paul, Minn.
STEWART, JOHN, ... Chambersburg, Pa.
STEWART, W. F. BAY, ... York, Pa.
STICKNEY, ALBERT, ... New York, N. Y.
STILES, EDWARD H., ... Kansas City, Mo.
STILLMAN, THOMAS E., ... New York, N. Y.
STILLWELL, L., ... Erie, Kan.
STOCKBRIDGE, HENRY, ... Baltimore, Md.
STOCKETT, J. SHAAFF, ... Annapolis, Md.
STOREY, MOORFIELD, ... Boston, Mass.
STORROW, JAMES J., ... Boston, Mass.
STRONG, ALONZO PAIGE, ... Schenectady, N. Y.
STROUT, A. A., ... Portland, Me.
STUART, M., ... Ravenna, O.
SULLIVAN, ALGERNON S., ... New York, N. Y.
SULZBERGER, MAYER, ... Philadelphia, Pa.
SWAIN, CHARLES M., ... Philadelphia, Pa.
SWAYNE, WAGER, ... New York, N. Y.
SWIFT, M. G. B., ... Fall River, Mass.
TAFT, ELIHU B., ... Burlington, Vt.
TAPPAN, JAMES C., ... Helena, Ark.
TAUSSIG, JAMES, ... St. Louis, Mo.
TAYLOR, JOHN D., ... New York, N. Y.
TAYLOR, JOHN W., ... Newark, N. J.
TAYLOR, R. S., ... Fort Wayne, Ind.
TENNEY, DANIEL K., ... Chicago, Ill.
TEESE, FREDERICK H., ... Newark, N. J.
TERRILL, H. L., ... New York, N. Y.
THAYER, R. A., ... Warren, O.
THOM, ALFRED P., ... Norfolk, Va.
THOMPSON, SEYMOUR D., ... St. Louis, Mo.
THURBER, HENRY T., ... Detroit, Mich.
THURSTON, BENJAMIN F., ... Providence, R. I.
THURSTON, JOHN D., ... Providence, R. I.
THWEATT, P. O., ... Helena, Ark.

TILLINGHAST, JAMES, ... Providence, R. I.
TODD, A. J., ... New York, N. Y.
TODD, M. HAMPTON, ... Philadelphia, Pa.
TOMPKINS, HAMILTON B., ... New York, N. Y.
TOMPKINS, HENRY B., ... Atlanta, Ga.
TOMPKINS, HENRY C., ... Montgomery, Ala.
TOOLE, EDWIN W., ... Helena, Mon.
TORREY, JAY L., ... St. Louis, Mo.
TOWNSEND, WASHINGTON, ... West Chester, Pa.
TOWNSEND, WILLIAM K., ... New Haven, Conn.
TRABUE, E. F., ... Louisville, Ky.
TREADWELL, JOHN P., ... Boston, Mass.
TROY, D. S., ... Montgomery, Ala.
TRUMBULL, LYMAN, ... Chicago, Ill.
TUCKER, J. RANDOLPH, ... Lexington, Va.
TUPPER, A. P., ... Middlebury, Vt.
TURNER, HERBERT B., ... New York, N. Y.
TUTHILL, RICHARD S., ... Chicago, Ill.
VAN BUREN, THOMAS B., ... Englewood, N. J.
VAN SLYCK, GEORGE W., ... New York, N. Y.
VAN SLYCK, NICHOLAS, ... Providence, R. I.
VAN WINKLE, W. W., ... Parkersburg, W. Va.
VAUX, RICHARD, ... Philadelphia, Pa.
VENABLE, RICHARD M., ... Baltimore, Md.
VILAS, WILLIAM F., ... Madison, Wis.
VREDENBURGH, JAMES B., ... Jersey City, N. J.
VROOM, GARRETT D. W., ... Trenton, N. J.
WADDELL, WILLIAM B., ... West Chester, Pa.
WADE, DECIUS S., ... Helena, Mon.
WAELDER, JACOB, ... San Antonio, Texas.
WAGNER, C. G., ... Siluria, Ala.
WAGNER, SAMUEL, ... Philadelphia, Pa.
WAIT, ALBERT S., ... Newport, N. H.
WARD, HENRY GALBRAITH, ... New York, N. Y.
WARD, JOHN E., ... New York, N. Y.
WARREN, IRA D., ... New York, N. Y.
WATROUS, GEORGE H., ... New Haven, Conn.
WATSON, D. T., ... Pittsburgh, Pa.
WATTS, LEGH R., ... Portsmouth, Va.
WAUL, T. N., ... Galveston, Tex.
WEADOCK, THOMAS A. E., ... Bay City, Mich.
WEART, JACOB, ... Jersey City, N. J.
WEBB, NATHAN, ... Portland, Me.
WEBB, WILLIAM B., ... Washington, D. C.
WEEKS, WILLIAM R., ... Newark, N. J.

Wegg, David S., ... Milwaukee, Wis.
Wells, H. H., ... Washington, D. C.
Wells, William P., ... Detroit, Mich.
Wheeler, Everett P., ... New York, N. Y.
Wheeler, William, ... New York, N. Y.
White, George, ... Boston, Mass.
Whittaker, Egbert, ... Saugerties, N. Y.
Wilcox, Ansley, ... Buffalo, N. Y.
Willard, Edward N., ... Scranton, Pa.
Willcox, W. F., ... Deep River, Conn.
Williams, Edward Calvin, ... Baltimore, Md.
Williams, Washington B., ... Jersey City, N. J.
Williamson, Samuel E., ... Cleveland, O.
Williston, W. C., ... Redwing, Minn.
Willson, A. E., ... Louisville, Ky.
Wilmer, Skipwith, ... Baltimore, Md.
Wilmer, W. N., ... New York, N. Y.
Wilson, F. A., ... Bangor, Me.
Wilson, John R., ... Indianapolis, Ind.
Wilson, Nathaniel, ... Washington, D. C.
Wilson, Thomas, ... Winona, Minn.
Wilson, William C., ... Lafayette, Ind.
Wilson, William R., ... Elizabeth, N. J.
Wiltbank, William W., ... Philadelphia, Pa.
Wing, Joseph A., ... Montpelier, Vt.
Winkler, Frederick C., ... Milwaukee, Wis.
Winthrop, William, ... West Point, N. Y.
Wise, John S., ... Richmond, Va.
Withrow, James E., ... St. Louis, Mo.
Wolverton, Simon P., ... Sunbury, Pa.
Woodard, Charles F., ... Bangor, Me.
Woodman, Edward, ... Portland, Me.
Woodruff, George M., ... Litchfield, Conn.
Woodruff, Robert S., ... Trenton, N. J.
Woods, Charles A., ... Marion, S. C.
Woolworth, J. M., ... Omaha, Neb.
Wright, Boykin, ... Augusta, Ga.
Wright, George G., ... Des Moines, Ia.
Wright, Thomas S., ... Des Moines, Ia.
Young, Edmond S., ... Dayton, O.
Young, George B., ... St. Paul, Minn.
Young, George R., ... Dayton, O.
Young, Henry E., ... Charleston, S. C.
Zeigler, Charles F., ... Philadelphia, Pa.
Zucker, Peter, ... Cleveland, O.

MEMBERS—AUGUST, 1887-1888.

ALABAMA.

Bragg, Walter L., ... Montgomery.
Clark, Gaylord B., ... Mobile.
Clopton, David, ... Montgomery.
Hall, Frank A., ... Montgomery.
Semple, Henry C., ... Montgomery.
Smith, Luther R., ... Mount Sterling.
Tompkins, Henry C., ... Montgomery.
Troy, D. S., ... Montgomery.
Wagner, C. G., ... Siluria.

ARKANSAS.

Cohn, M. M., ... Little Rock.
Du Val, Benjamin T., ... Fort Smith.
Garland, Augustus H., ... Little Rock.
Horner, John J., ... Helena.
Moore, John M., ... Little Rock.
Rose, U. M., ... Little Rock.
Tappan, James C., ... Helena.
Thweatt, P. O., ... Helena.

CALIFORNIA.

Haymond, Creed, ... San Francisco,
Hodge, Noah, ... San Diego.

CONNECTICUT.

Baldwin, Simeon E., ... New Haven.
Brewster, Lyman D., ... Danbury.
Colby, James F., ... New Haven.
Curtis, Julius B., ... Stamford.
Gunn, George M., ... Milford
Halsey, Jeremiah, ... Norwich.
Hamersley, William, ... Hartford.
Hyde, Alvan P., ... Hartford.
Pardee, Henry E., ... New Haven.
Perry, John H., ... Southport.

CONNECTICUT—Continued.

PLATT, JOHNSON T., ... New Haven.
RAYNOLDS, EDWARD V., ... New Haven.
RUSSELL, TALCOTT H., ... New Haven.
STANTON, LEWIS E., ... Hartford.
TOWNSEND, WILLIAM K., ... New Haven.
WATROUS, GEORGE H., ... New Haven.
WILLCOX, W. F., ... Deep River.
WOODRUFF, GEORGE M., ... Litchfield.

DELAWARE.

BATES, GEORGE H., ... Wilmington.
BAYARD, THOMAS F., ... Wilmington.
BRADFORD, EDWARD G., ... Wilmington.
COMEGYS, JOSEPH P., ... Dover.
GRAY, GEORGE, ... Wilmington.
GRUBB, IGNATIUS C., ... Wilmington.
HARRINGTON, AUSTIN, ... Wilmington.
HIGGINS, ANTHONY, ... Wilmington.
LORE, CHARLES B., ... Wilmington.
MASSEY, GEORGE V., ... Dover.
NICHOLSON, JOHN R., ... Dover.
PORTER, WILLARD HALL, ... Wilmington.
SAULSBURY, WILLARD, JR., ... Wilmington.

DISTRICT OF COLUMBIA.

APPLEBY, GEORGE F., ... Washington.
ARMSTRONG, WILLIAM H., ... Washington.
ASHTON, J. HUBLEY, ... Washington.
BERRY, WALTER V. R., ... Washington.
BLAIR, JOHN S., ... Washington.
BLANKMAN, JOHN S., ... Washington.
BOND, S. R., ... Washington.
BROWNING, FRANK T., ... Washington.
DARLINGTON, JOSEPH J., ... Washington.
EARLE, WILLIAM E., ... Washington.
ELLIOT, CHARLES A., ... Washington.
GARNETT, HENRY WISE, ... Washington.
HAMILTON, GEORGE EARNEST, ... Washington.
HOFFMAN, CHARLES W., ... Washington.
JOHNSTON, JAMES M., ... Washington.
LANCASTER, CHARLES C., ... Washington.
LARNER, JOHN B., ... Washington.
LEE, BLAIR, ... Washington.
MCCAMMON, JOSEPH K., ... Washington.
MELOY, WILLIAM A., ... Washington.

DISTRICT OF COLUMBIA—Continued.

Morris, M. F., ... Washington.
Morse, A. Porter, ... Washington.
Murphy, D. F., ... Washington.
Payne, James G., ... Washington.
Reeve, Felix A., ... Washington.
Selden, John, ... Washington.
Webb, William B., ... Washington.
Wells, H. H., ... Washington.
Wilson, Nathaniel, ... Washington.

FLORIDA.

Cooper, John C., ... Jacksonville.
Randall, E. M., ... Jacksonville.

GEORGIA.

Adams, Samuel B., ... Savannah.
Anderson, Clifford, ... Macon.
Bacon, Augustus O., ... Macon.
Barrow, Pope, ... Athens.
Bartlett, Charles L., ... Macon.
Black, J. C. C., ... Augusta.
Calhoun, Patrick, ... Atlanta.
Charlton, Walter G., ... Savannah.
Chisholm, Walter S., ... Savannah.
Clarke, Marshall J., ... Atlanta.
Cumming, Joseph B., ... Augusta.
Cunningham, Henry C., ... Savannah.
du Bignon, Fleming G., ... Savannah.
Erwin, R. G., ... Macon.
Falligant, Robert, ... Savannah.
Garrard, William, ... Savannah.
Glenn, John F., ... Atlanta.
Hammond, N. J., ... Atlanta.
Hill, Walter B., ... Macon.
Jackson, Henry, ... Atlanta.
Jones, Charles C., Jr., ... Augusta.
Lawton, Alexander R., ... Savannah.
Lawton, Alexander R., Jr., ... Savannah.
Lyon, R. F., ... Macon.
Mackall, William W., Jr., ... Savannah.
Meldrim, P. W., ... Savannah.
Mercer, George A., ... Savannah.
Miller, Frank H., ... Augusta.
Miller, William K., ... Augusta.

GEORGIA—Continued.

MONTGOMERY, WILLIAM W., ... Augusta.
MYNATT, PRYOR L., ... Atlanta.
NEWMAN, EMILE, ... Savannah.
NEWMAN, W. T., ... Atlanta.
OWENS, GEORGE W., ... Savannah.
REESE, WILLIAM M., ... Washington.
SIMMONS, THOMAS J., ... Macon.
SMITH, HOKE, ... Atlanta.
TOMPKINS, HENRY B., ... Atlanta.
WRIGHT, BOYKIN, ... Augusta.

ILLINOIS.

ALDRICH, CHARLES H., ... Chicago.
AYER, B. F., ... Chicago.
BONNEY, C. C., ... Chicago.
DENT, THOMAS, ... Chicago.
DUNHAM, CHARLES, ... Geneseo.
EDSALL, JAMES K., ... Chicago.
FLOWER, JAMES M., ... Chicago.
HURD, HARVEY B., ... Chicago.
KOERNER, GUSTAVE, ... Belleville.
MASON, EDWARD G., ... Chicago.
MURPHY, THEODORE D., ... Woodstock.
PALMER, JOHN M., ... Springfield.
SHERMAN, E. B., ... Chicago.
TENNEY, DANIEL K., ... Chicago.
TRUMBULL, LYMAN, ... Chicago.
TUTHILL, RICHARD S., ... Chicago.

INDIANA.

BUTLER, JOHN M., ... Indianapolis.
DAVIDSON, THOMAS F., ... Crawfordville.
FAIRBANKS, CHARLES W., ... Indianapolis.
FISHBACK, W. P., ... Indianapolis.
GRESHAM, WALTER Q., ... Indianapolis.
HARRISON, BENJAMIN, ... Indianapolis.
HENDRICKS, ABRAM W., ... Indianapolis.
HORD, OSCAR B., ... Indianapolis.
TAYLOR, R. S., ... Fort Wayne.
WILSON, JOHN R., ... Indianapolis.
WILSON, WILLIAM C., ... Lafayette.

IOWA.

ANDERSON, JOSEPH G., ... Keokuk.
BOAL, GEORGE J., ... Iowa City.

IOWA—Continued.

Cummins, A. B., ... Des Moines.
Daniels, Francis B., ... Dubuque.
Duncombe, John F., ... Fort Dodge.
Kauffman, B. F., ... Des Moines.
Runnels, John S., ... Des Moines.
Shiras, Oliver P., ... Dubuque.
Wright, George G., ... Des Moines.
Wright, Thomas S., ... Des Moines.

KANSAS.

Dillon, Hiram P., ... Topeka.
McAtee, John L., ... Caldwell.
Nebeker, Lucas, ... Wellington.
Peck, Geo. R., ... Topeka.
Stillwell, L., ... Erie.

KENTUCKY.

Breckinridge, Wm. C. P., ... Lexington.
Bryan, James W., ... Covington.
Buckner, B. F., ... Lexington.
Davie, Geo. M., ... Louisville.
Goebel, Wm., ... Covington.
Moore, J. Z., ... Owensboro.
Pirtle, James S., ... Louisville.
Scott, C. Suydam, ... Lexington.
Trabue, E. F., ... Louisville.
Willson, A. E., ... Louisville.

LOUISIANA.

Bayne, Thomas L., ... New Orleans.
Benedict, W. S., ... New Orleans.
Blanc, Samuel P., ... New Orleans.
Breaux, Gus. A., ... New Orleans.
Brice, A. G., ... New Orleans.
Denègre, Geo., ... New Orleans.
Ellis, E. John, ... New Orleans.
Eustis, James B., ... New Orleans.
Farrar, Edgar H., ... New Orleans.
Forman, Benjamin Rice, ... New Orleans.
Gibson, Randall Lee, ... New Orleans.
Gilmore, Thomas, ... New Orleans.
Goldthwaite, Alfred, ... New Orleans.
Houston, William T., ... New Orleans.

LOUISIANA—Continued.

Howe, W. W., ... New Orleans.
Hunt, Carleton, ... New Orleans.
Kelly, Henry B., ... New Orleans.
Kruttschnitt, Ernest B., ... New Orleans.
Legendre, James, ... New Orleans.
McCaleb, E. Howard, ... New Orleans.
Merrick, Edwin T., ... New Orleans.
Miller, H. C., ... New Orleans.
Pardee, Don A., ... New Orleans.
Poché, F. P., ... New Orleans.
Robinson, N. T. N., ... New Orleans.
Rost, Emile, ... New Orleans.
Semmes, Thomas J., ... New Orleans.

MAINE.

Bird, George E., ... Portland.
Cleaves, Nathan, ... Portland.
Gould, A. P., ... Thomaston.
Haskell, Thomas H., ... Portland.
Holmes George F., ... Portland.
Libby, Charles F., ... Portland.
Stetson, Charles P., ... Bangor.
Strout, A. A., ... Portland.
Webb, Nathan, ... Portland.
Wilson, F. A., ... Bangor.
Woodard, Charles F., ... Bangor.
Woodman, Edward, ... Portland.

MARYLAND.

Alexander, Julian J., ... Baltimore.
Beasten, Charles, Jr., ... Baltimore.
Bonaparte, Charles J., ... Baltimore.
Brown, Sebastian, ... Baltimore.
Cowen, John K., ... Baltimore.
Cross, E. J. D., ... Baltimore.
Donaldson, John J., ... Baltimore.
Findlay, John V. L., ... Baltimore.
Fisher, William A., ... Baltimore.
Goodwin, C. Ridgely, ... Baltimore.
Gwinn, Charles J. M., ... Baltimore.
Handy, John H., ... Baltimore.
Hinkley, Edward Otis, ... Baltimore.
Hughes, Thomas, ... Baltimore.
Jones, Isaac D., ... Baltimore.

MARYLAND—Continued.

KNOTT, A. LEO, ... Baltimore.
LATROBE, JOHN H. B., ... Baltimore.
MARSHALL, CHARLES, ... Baltimore.
MASON, JOHN T. (JOHN T. MASON, R.), . . . Baltimore.
MCINTOSH, DAVID G., ... Towsontown.
MUNNIKHUYSEN, HOWARD, ... Baltimore.
ROBERTS, JOSEPH K., JR., ... Upper Marlboro.
ROGERS, ROBERT LYON, ... Baltimore.
SHARP, GEORGE M., ... Baltimore.
STOCKBRIDGE, HENRY, ... Baltimore.
STOCKETT, J. SHAAFF, ... Annapolis.
VENABLE, RICHARD M., ... Baltimore.
WILLIAMS, EDWARD CALVIN, ... Baltimore.
WILMER, SKIPWITH, ... Baltimore.

MASSACHUSETTS.

ALLEN, STILLMAN B., ... Boston.
BALDWIN, G. W., ... Boston.
BARTLETT, SIDNEY, ... Boston.
BELL, C. U., ... Lawrence.
BRALEY, HENRY K., ... Fall River.
BROOKS, FRANCIS A., ... Boston.
BULLOCK, A. G., ... Worcester.
CHANDLER, ALFRED D., ... Boston.
CLIFFORD, CHARLES W., ... New Bedford.
COLLINS, PATRICK A., ... Boston.
CRAPO, WILLIAM W., ... New Bedford.
CURLEY, THOMAS, ... Boston.
CURTIS, BENJAMIN ROBBINS, ... Boston.
DAVIS, JOHN, ... Lowell.
DICKINSON, M. F., JR., ... Boston.
DILLAWAY, W. E. R., ... Boston.
ENDICOTT, WILLIAM C., ... Salem.
FISH, FREDERICK P., ... Boston.
FOX, WILLIAM H., ... Taunton.
FRENCH, WILLIAM B., ... Boston.
GASTON, WILLIAM, ... Boston.
GOODWIN, FRANK, ... Boston.
HEMENWAY, ALFRED, ... Boston.
HOWES, L. W., ... Boston.
HURD, FRANCIS W., ... Boston.
JOHNSON, BYRON B., ... Waltham.
JONES, LEONARD A., ... Boston.
LADD, NATH. W., ... Boston.

MASSACHUSETTS—Continued.

MARSHALL, JOSHUA N., ... Lowell.
MAXWELL, J. AUDLEY, ... Boston.
MONROE, WILLIAM A., ... Boston.
MYERS, JAMES J., ... Boston.
POWERS, CHARLES E., ... Boston.
PUTNAM, HENRY W., ... Boston.
RICHARDSON, DANIEL S., ... Lowell.
RICHARDSON, GEORGE F., ... Lowell.
RUSSELL, CHARLES T., JR., ... Cambridge.
RUSSELL, WILLIAM G., ... Boston.
SCAIFE, LAURISTON L., ... Boston.
SEARLE, GEORGE W., ... Boston.
SEARS, PHILIP H., ... Boston.
SHATTUCK, GEORGE O., ... Boston.
SMITH, CHAUNCEY, ... Boston.
SOUTHARD, CHARLES B., ... Boston.
SPAULDING, JOHN, ... Boston.
STOREY, MOORFIELD, ... Boston.
STORROW, JAMES J., ... Boston.
SWIFT, M. G. B., ... Fall River.
TREADWELL, JOHN P., ... Boston.
WHITE, GEORGE, ... Boston.

MICHIGAN.

BAKER, HERBERT L., ... Detroit.
BALL, DANIEL H., ... Marquette.
BROWN, HENRY B., ... Detroit.
CONELY, JOHN D., ... Detroit.
COOLEY, THOMAS M., ... Ann Arbor.
DICKINSON, DON M., ... Detroit.
DONNELLY, JOHN C., ... Detroit.
DUFFIELD, HENRY M., ... Detroit.
GRIFFIN, LEVI T., ... Detroit.
HENDERSON, HENRY P., ... Mason.
HOSMER, GEORGE S., ... Detroit.
KENT, CHARLES A., ... Detroit.
MEDDAUGH, ELIJAH W., ... Detroit.
MOORE, GEORGE WILLIAM, ... Detroit.
O'BRIEN, THOMAS J., ... Grand Rapids.
PENDLETON, EDWARD W., ... Detroit.
ROGERS, HENRY WADE, ... Ann Arbor.
THURBER, HENRY T., ... Detroit.
WEADOCK, THOMAS A. E., ... Bay City.
WELLS, WILLIAM P., ... Detroit.

MINNESOTA.

Benton, Reuben C., ... Minneapolis.
Cole, Gordon E., ... St. Paul.
Ensign, Josiah D., ... Duluth.
Ingersoll, Frederick G., ... St. Paul.
Hahn, William J., ... Minneapolis.
Howe, John D., ... St. Paul.
Levi, Albert L., ... Minneapolis.
Lovely, John A., ... Albert Lea.
Pierce, James O., ... Minneapolis.
Sanborn, John B., ... St. Paul.
Sanborn, Walter H., ... St. Paul.
Stevens, Hiram F., ... St. Paul.
Williston, W. C., ... Redwing.
Wilson, Thomas, ... Winona.
Young, George B., ... St. Paul.

MISSISSIPPI.

Gilland, John D., ... Vicksburg.
Houston, Lock E., ... Aberdeen.
Howry, Charles B., ... Oxford.
Leigh, Joseph E., ... Columbus.
Sims, W. H., ... Columbus.

MISSOURI.

Adams, E. B., ... St. Louis.
Barclay, Shepard, ... St. Louis.
Breckinridge, Samuel M., ... St. Louis.
Broadhead, James O., ... St. Louis.
Dobson, Charles L., ... Kansas City.
Donaldson, William R., ... St. Louis.
Galt, Smith P., ... St. Louis.
Glover, John M., ... St. Louis.
Hammond, William G., ... St. Louis.
Henderson, J. B., ... St. Louis.
Hitchcock, Henry, ... St. Louis.
Hough, Warwick, ... St. Louis.
Judson, Frederick N., ... St. Louis.
Kehr, Edward C., ... St. Louis.
Lathrop, Gardiner, ... Kansas City.
Lewis, James M., ... St. Louis.
Madill, George A., ... St. Louis.
McDougal, Henry C., ... Kansas City.
Noble, John W., ... St. Louis.
Pratt, Wallace, ... Kansas City.

MISSOURI—Continued.

STILES, EDWARD H., ... Kansas City.
TAUSSIG, JAMES, ... St. Louis.
THOMPSON, SEYMOUR D., ... St. Louis.
TORREY, JAY L., ... St. Louis.
WITHROW, JAMES E., ... St. Louis.

MONTANA TERRITORY.

BLAKE, HENRY N., ... Virginia City.
CULLEN, WILLIAM E., ... Helena.
MCLEARY, J. H., ... Bozeman.
SANDERS, WILBUR F., ... Helena.
TOOLE, EDWIN W., ... Helena.
WADE, DECIUS S., ... Helena.

NEBRASKA.

MANDERSON, CHARLES F., ... Omaha.
WOOLWORTH, J. M., ... Omaha.

NEVADA.

LEONARD, ORVILLE R., ... Carson City.

NEW HAMPSHIRE.

ATHERTON, HENRY B., ... Nashua.
BINGHAM, HARRY, ... Littleton.
BURNHAM, HENRY E., ... Manchester.
BURNS, CHARLES H., ... Wilton.
CROSS, DAVID, ... Manchester.
CURRIER, FRANK D., ... E. Canaan.
FELLOWS, JOSEPH W., ... Manchester.
LADD, WILLIAM S., ... Lancaster.
MARSTON, GILMAN, ... Exeter.
SPRING, JOHN L., ... Lebanon.
WAIT, ALBERT S., ... Newport.

NEW JERSEY.

ALLEN, ROBERT, JR., ... Red Bank.
BEDLE, JOSEPH D., ... Jersey City.
BOGGS, HERBERT, ... Newark.
BORCHERLING, CHARLES, ... Newark.
BUCHANAN, JAMES, ... Trenton.
DICKINSON, S. MEREDITH, ... Trenton.
FLEMMING, JAMES, ... Jersey City.
FORT, J. FRANK, ... Newark.

NEW JERSEY—Continued.

Garretson, A. Q., ... Jersey City.
Goble, L. Spencer, ... Newark.
Grant, Alexander, Jr., ... Newark.
Gray, Samuel H., ... Camden.
Keasbey, Anthony Q., ... Newark.
McCarter, Thomas N., ... Newark.
Parker, Cortlandt, ... Newark.
Parker, R. Wayne, ... Newark.
Randolph, Joseph F., ... Jersey City.
Richey, Augustus G., ... Trenton.
Schenck, Abram V., ... New Brunswick.
Shipman, J. G., ... Belvidere.
Taylor, John W., ... Newark.
Teese, Frederick H., ... Newark.
Van Buren, Thomas B., ... Englewood.
Vredenburgh, James B., ... Jersey City.
Vroom, Garrett D. W., ... Trenton.
Weart, Jacob, ... Jersey City.
Weeks, William R., ... Newark.
Williams, Washington B., ... Jersey City.
Wilson, William R., ... Elizabeth.
Woodruff, Robert S., ... Trenton.

NEW YORK.

Abbott, Austin, ... New York.
Avery, Frank C., ... Ovid.
Baker, Ashley D. L., ... Gloversville.
Beach, Charles F., Jr., ... New York.
Bellinger, Lewis H., ... New York.
Benedict, Robert D., ... New York.
Benton, Daniel L., ... Hornellsville.
Bischoff, Henry, Jr., ... New York.
Bristow, Benjamin H., ... New York.
Bruno, Richard M., ... New York.
Brush, Charles H., ... New York.
Bullard, E. F., ... Saratoga Springs.
Burnett, Henry L., ... New York.
Butler, Charles, ... New York.
Butler, Charles Henry, ... New York.
Butler, Wm. Allen, ... New York.
Butler, Wm. Allen, Jr., ... New York.
Carter, James C., ... New York.
Cary, Melbert B., ... New York.
Chamberlain, D. H., ... New York.
Chittenden, L. E., ... New York.

NEW YORK—Continued.

CLARK, THOMAS ALLEN, ... Albany.
CLINTON, HENRY L., ... New York.
COLLIER, M. DWIGHT, ... New York.
COOK, WILLIAM W., ... New York.
CROWELL, CHARLES E., ... New York.
DA COSTA, CHARLES M., ... New York.
DAVISON, CHARLES A., ... New York.
DESTY, ROBERT, ... Rochester.
DICKSON, HERBERT E., ... New York.
DILLON, JOHN F., ... New York.
DORSHEIMER, WILLIAM, ... New York.
DUDLEY, JAMES M., ... Johnstown.
EATON, SHERBURNE B., ... New York.
EVARTS, WILLIAM M., ... New York.
FIELD, DAVID DUDLEY, ... New York.
FOX, AUSTEN G., ... New York.
FRANKENHEIMER, JOHN, ... New York.
GARDINER, CHARLES A., ... New York.
GRINNELL, W. MORTON, ... New York.
GUILBERT, ALBERT B., ... Rochester.
HALE, MATTHEW, ... Albany.
HAWKESWORTH, R. W., ... New York.
HEGAMAN, W. A. O., ... New York.
HERMAN, HENRY M., ... New York.
HOADLY, GEORGE, ... New York.
HOLT, GEORGE C., ... New York.
HORNBLOWER, WM. B., ... New York.
HUBBARD, THOMAS H., ... New York.
HUTCHINS, WALDO, ... New York.
ISAACS, M. S., ... New York.
JEWETT, HUGH J., ... New York.
JOHNSON, EDGAR M., ... New York.
KERNAN, FRANCIS, ... Utica.
LAMBERTON, C. L., ... New York.
LEEDS, CHARLES C., ... New York.
LEWIS, CHARLTON T., ... New York.
MACFARLAND, W. W., ... New York.
MCCOOK, JOHN J., ... New York.
MATHEWS, ALBERT, ... New York.
MILBURN, JOHN G., ... Buffalo.
MOAK, N. C., ... Albany.
MOOT, ADELBERT, ... Buffalo.
MYERS, NATHANIEL, ... New York.
NASH, STEPHEN P., ... New York.
NELSON, HOMER A., ... Poughkeepsie.

NEW YORK—Continued.

Nichols, Geo. L., Jr., ... New York.
Nicoll, DeLancey, ... New York.
Olmstead, Aaron B., ... Saratoga Springs.
Olmstead, Dwight H., ... New York.
Parker, Amasa J., ... Albany.
Parker, James, ... New York.
Peabody, Charles A., ... New York.
Phelps, Wm. Walter, ... New York.
Potter, Frederick, ... New York.
Potter, Orlando B., ... New York.
Prime, Ralph E., ... Yonkers.
Pryor, Roger A., ... Brooklyn.
Rogers, Sherman S., ... Buffalo.
Russell, W. H. H., ... New York.
Sanford, Orlin M., ... New York.
Schoonmaker, Augustus, Jr., ... Kingston.
Scott, James L., ... Ballston Springs.
Semple, Mackenzie, ... New York.
Sewell, Robert, ... New York.
Shack, Ferdinand, ... New York.
Shepard, Elliot F., ... New York.
Smith, Nelson, ... New York.
Speir, Gilbert M., Jr., ... New York.
Sprague, E. C., ... Buffalo.
Sterne, Simon, ... New York.
Stickney, Albert, ... New York.
Stillman, Thomas E., ... New York.
Strong, Alonzo Paige, ... Schenectady.
Sullivan, Algernon S., ... New York.
Swayne, Wager, ... New York.
Taylor, John D., ... New York.
Terrill, H. L., ... New York.
Todd, A. J., ... New York.
Tompkins, Hamilton B., ... New York.
Turner, Herbert B., ... New York.
Van Slyck, George W., ... New York.
Ward, Henry Galbraith, ... New York.
Ward, John E., ... New York.
Warren, Ira D., ... New York.
Wheeler, Everett P., ... New York.
Wheeler, William, ... New York.
Whittaker, Egbert, ... Saugerties.
Wilcox, Ansley, ... Buffalo.
Wilmer, W. N., ... New York.
Winthrop, William, ... West Point.

NORTH CAROLINA.

Bridgers, John L., Jr., ... Tarboro.
Keogh, Thomas B. . . . . Greensboro.

OHIO.

Baldwin, Charles C., ... Cleveland.
Burke, Stevenson, ... Cleveland.
Chalker, Newton, ... Akron.
Colston, Edward, ... Cincinnati.
Davidson, William A., ... Cincinnati.
Dickinson, J. H., ... Wellington.
Ferguson, E. A., ... Cincinnati.
Ferris, Aaron A., ... Cincinnati.
Follett, Martin D., ... Marietta.
Force, Manning F., ... Cincinnati.
Gilmer, T. J., ... Warren.
Gilson, J. W., ... Canton.
Green, Edwin P., ... Akron.
Griswold, Seneca O., ... Cleveland.
Gunckel, Lewis B., ... Dayton.
Hale, John C., ... Cleveland.
Hall, John J., ... Akron.
Harrison, Richard A., ... Columbus.
Haynes, Daniel A., ... Dayton.
Horton, S. Dana, ... Pomeroy.
Houk, George W., ... Dayton.
Hunt, Samuel F., ... Cincinnati.
Johnston, Joseph R., ... Youngstown.
Jones, Asahel W., ... Youngstown.
King, Rufus, ... Cincinnati.
Logan, Thomas A., ... Cincinnati.
Loudon, Dewitt C., ... Georgetown.
Mackoy, William H., ... Cincinnati.
McClintock, William T., ... Cincinnati.
Munger, Warren, ... Dayton.
Murray, R. B., ... Youngstown.
Oviatt, Edward, ... Akron.
Page, Henry F., ... Circleville.
Ramsey, William M., ... Cincinnati.
Ranney, Henry C., ... Cleveland.
Ranney, Rufus P., ... Cleveland.
Shaw, R. K., ... Marietta.
Spear, William T., ... Warren.
Stuart, M., ... Ravenna.
Thayer, R. A., ... Warren.
Williamson, Samuel E., ... Cleveland.

OHIO—Continued.

YOUNG, EDMOND S., ... Dayton.
YOUNG, GEORGE R., ... Dayton.
ZUCKER, PETER, ... Cleveland.

OREGON.

DEADY, M. P., ... Portland.

PENNSYLVANIA.

ALLEN, ROBERT P., ... Williamsport.
ARNOLD MICHAEL, ... Philadelphia.
ATHERTON, THOMAS H., ... Wilkesbarre.
BAER, GEORGE F., ... Reading.
BAUSMAN, J. W. B., ... Lancaster.
BEDFORD, GEORGE R., ... Wilkesbarre.
BIDDLE, GEORGE W., ... Philadelphia.
BISPHAM, GEORGE TUCKER, ... Philadelphia.
BRECK, CHARLES DU PONT, ... Scranton.
BREDIN, JAMES, ... Pittsburgh.
BRUNDAGE, A. R., ... Wilkesbarre.
BUDD, HENRY, ... Philadelphia.
CONARROE, GEORGE M., ... Philadelphia.
CRAWFORD, GEORGE L., ... Philadelphia.
CUMMIN, H. H., ... Williamsport.
DARLING, EDWARD P., ... Wilkesbarre.
DARLING, J. VAUGHAN, ... Wilkesbarre.
DERR, ANDREW F., ... Wilkesbarre.
DORRANCE, J. FORD, ... Meadville.
FISHER, WILLIAM RIGHTER, ... Philadelphia.
FOX, EDWARD J., ... Easton.
GILBERT, LYMAN D., ... Harrisburg.
GUTHRIE, GEORGE W., ... Pittsburgh.
HANDLEY, JOHN, ... Scranton.
HEMPHILL, JOSEPH, ... West Chester.
HINCKLEY, ROBERT H., ... Philadelphia.
HUEY, SAMUEL B., ... Philadelphia.
KAERCHER, GEORGE R., ... Philadelphia.
KAUFFMAN, A. J., ... Columbia.
KULP, GEORGE B., ... Wilkesbarre.
LEAR, HENRY, ... Doylestown.
LISTER, CHARLES C., ... Philadelphia.
LITTLE, WILLIAM E., ... Tunkhannock.
LIVINGSTON, J. B., ... Lancaster.
MACVEAGH, WAYNE, ... Philadelphia.
MCCLINTOCK, ANDREW H., ... Wilkesbarre.

PENNSYLVANIA—Continued.

McClintock, Andrew T., ... Wilkesbarre.
Mercer, George G., ... Philadelphia.
Mercur, Rodney A., ... Towanda.
Miller, E. Spencer, ... Philadelphia.
Miller, N. Du Bois, ... Philadelphia.
Mitchell, James T., ... Philadelphia.
Monaghan, Robert E., ... West Chester.
Morris, Effingham B., ... Philadelphia.
Munson, C. La Rue, ... Williamsport.
North, E. D., ... Lancaster.
North, Hugh M., ... Columbia.
Osborne, Edwin S., ... Wilkesbarre.
Packer, John B., ... Sunbury.
Palmer, Henry W., ... Wilkesbarre.
Parrish, Joseph, ... Philadelphia.
Parsons, Henry C., ... Williamsport.
Patterson, C. Stuart, ... Philadelphia.
Patterson, T. Elliott, ... Philadelphia.
Pennypacker, Charles H., ... West Chester.
Pennypacker, Samuel W., ... Philadelphia.
Perkins, Samuel C., ... Philadelphia.
Pettit, Silas W., ... Philadelphia.
Porter, William W., ... Philadelphia.
Price, J. Sergeant, ... Philadelphia.
Prichard, Frank P., ... Philadelphia.
Rawle, Francis, ... Philadelphia.
Rawle, Wm. Henry, ... Philadelphia.
Reed, Henry, ... Philadelphia.
Remak, Stephen S., ... Philadelphia.
Reynolds, Samuel H., ... Lancaster.
Robb, Samuel, ... Philadelphia.
Rogers, George W., ... Norristown.
Sanders, Dallas, ... Philadelphia.
Seibert, W. N., ... New Bloomfield.
Shiras, George, Jr., ... Pittsburgh.
Shoemaker, L. D., ... Wilkesbarre.
Smith, Walter George, ... Philadelphia.
Stewart, John, ... Chambersburg.
Stewart, W. F. Bay, ... York.
Sulzberger, Mayer, ... Philadelphia.
Swain, Charles M., ... Philadelphia.
Todd, M. Hampton, ... Philadelphia.
Townsend, Washington, ... West Chester.
Vaux, Richard, ... Philadelphia.
Waddell, William B., ... West Chester.

PENNSYLVANIA—Continued.

WAGNER, SAMUEL, ... Philadelphia.
WATSON, D. T., ... Pittsburgh.
WILLARD, EDWARD N., ... Scranton.
WILTBANK, WILLIAM W., ... Philadelphia.
WOLVERTON, SIMON P., ... Sunbury.
ZEIGLER, CHARLES F., ... Philadelphia.

RHODE ISLAND.

BAKER, DARIUS, ... Newport.
BRADLEY, CHARLES, ... Providence.
BRADLEY, CHARLES S., ... Providence.
LAWRENCE, ISAAC, ... Newport.
PECKHAM, FRANCIS B., ... Newport.
RIPLEY, JAMES M., ... Providence.
ROELKER, WILLIAM G, ... Providence.
THURSTON, BENJAMIN F., ... Providence.
THURSTON, JOHN D., ... Providence.
TILLINGHAST, JAMES, ... Providence.
VAN SLYCK, NICHOLAS, ... Providence.

SOUTH CAROLINA.

BACOT, T. W., ... Charleston.
BARKER, THEODORE G., ... Charleston.
BENET, WILLIAM C., ... Abbeville.
BOYD, ROBERT W., ... Darlington.
BRAWLEY, WILLIAM H., ... Charleston.
DARGAN, E. KEITH, ... Darlington C. H.
GILLAND, THOMAS M., ... Kingstree.
HASKELL, JOHN C., ... Columbia.
HEMPHILL, JOHN J., ... Chester.
JOHNSTONE, GEORGE, ... Newbury.
LORD, SAMUEL, ... Charleston.
MAGRATH, A. G., ... Charleston.
MCCRADY, EDWARD, JR., ... Charleston.
MORDECAI, T. MOULTRIE, ... Charleston.
NETTLES, CLEMENT S., ... Darlington.
ORR, JAMES L., ... Greenville.
PARKER, WILLIAM H., ... Abbeville.
SIMONTON, C. H., ... Charleston.
SMYTHE, AUGUSTINE T., ... Charleston.
WOODS, CHARLES A., ... Marion.
YOUNG, HENRY E., ... Charleston.

TENNESSEE.

Allison, Andrew, ... Nashville.
Brown, John C., ... Pulaski.
Carroll, William H., ... Memphis.
Cooper, Edmund, ... Shelbyville.
Cooper, William F., ... Nashville.
Dickinson, J. M., ... Nashville.
Estes, Bedford M., ... Memphis.
Fentress, James, ... Bolivar.
Gaut, John M., ... Nashville.
McFarland, L. B., ... Memphis.
McNeal, Albert T., ... Bolivar.
Merritt, A. G., ... Nashville.
Moorman, H. C., ... Somerville.
Morris, Robert L., ... Nashville.

TEXAS.

Ballinger, W. P., ... Galveston.
Waelder, Jacob, ... San Antonio.
Waul, T. N., ... Galveston.

VERMONT.

Johnson, William E., ... Woodstock.
McCullough, John G., ... N. Bennington.
Noble, Guy C., ... St. Albans.
Paul, Norman, ... Woodstock.
Phelps, Edward J., ... Burlington.
Porter, Charles W., ... Montpelier.
Roberts, Daniel, ... Burlington.
Shurtliff, S. C., ... Montpelier.
Smalley, B. B., ... Burlington.
Taft, Elihu B., ... Burlington.
Tupper, A. P., ... Middlebury.
Wing, Joseph A., ... Montpelier.

VIRGINIA.

Beach, S. F., ... Alexandria.
Crocker, James F., ... Portsmouth.
Garnett, Theodore S., ... Norfolk.
Gilliam, Marshall M., ... Richmond.
Hamilton, Alexander, ... Petersburg.
Hunton, Eppa, ... Warrenton.
Kent, Linden, ... P. O. Wash., D. C.
Lyon, James, ... Richmond.

VIRGINIA—Continued.

PAGE, LEGH R., ... Richmond.
ROBERTSON, WILLIAM J., ... Charlottesville.
THOM, ALFRED P., ... Norfolk.
TUCKER, J. RANDOLPH, ... Lexington.
WATTS, LEGH R., ... Portsmouth.
WISE, JOHN S., ... Richmond.

WEST VIRGINIA.

BOGGESS, CALEB, ... Clarksburg.
COLE, W. L., ... Parkersburg.
DAVIS, JOHN J., ... Clarksburg.
HEREFORD, FRANK, ... Union.
HIGGINBOTHAM, C. C., ... Buckhannon.
HUTCHINSON, JOHN A., ... Parkersburg.
KNIGHT, EDWARD B., ... Charleston.
SOMMERVILLE, J. B., ... Wheeling.
VAN WINKLE, W. W., ... Parkersburg.

WISCONSIN.

CARY, ALFRED L., ... Milwaukee.
CARY, JOHN W., ... Milwaukee.
FLANDERS, JAMES G., ... Milwaukee.
GREGORY, J. C., ... Madison.
HERDEGEN, ADOLPH, ... Milwaukee.
HINER, J. W., ... Fond du Lac.
HOOKER, DAVID G., ... Milwaukee.
HUDD, THOMAS R., ... Green Bay.
JACKSON, A. A., ... Janesville.
JENKINS, JAMES G., ... Milwaukee.
MILLER, B. K., ... Milwaukee.
PINNEY, SILAS U., ... Madison.
SCHLEY, BRADLEY G., ... Milwaukee.
VILAS, WILLIAM F., ... Madison.
WEGG, DAVID S., ... Milwaukee.
WINKLER, FREDERICK C., ... Milwaukee.

RECAPITULATION.

Alabama,	9	Missouri,	25
Arkansas,	8	Montana Ty.,	6
California,	2	Nebraska,	2
Connecticut,	18	Nevada,	1
Delaware,	13	New Hampshire,	11
District of Columbia,	29	New Jersey,	30
Florida,	2	New York,	112
Georgia,	39	North Carolina,	2
Illinois,	16	Ohio,	44
Indiana,	11	Oregon,	1
Iowa,	10	Pennsylvania,	87
Kansas,	5	Rhode Island,	11
Kentucky,	10	South Carolina,	35
Louisiana,	27	Texas,	3
Maine,	12	Vermont,	12
Maryland,	29	Virginia,	14
Massachusetts,	50	West Virginia,	9
Michigan,	35	Wisconsin,	16
Mississippi,	5		
		Total,	751

APPENDIX.

ADDRESS

OF

THOMAS J. SEMMES,

OF LOUISIANA,

PRESIDENT OF THE ASSOCIATION.

I proceed without exordium to the performance of the duty imposed on the President of this Association by its Constitution, which provides that he shall open each Annual Meeting with an address, "communicating the most noteworthy changes in the statute law on points of general interest made in the several States and by Congress."

The Legislatures of all the States, except Iowa, Maryland, Kentucky, Mississippi, and Louisiana, have been in session during the year, but I have not been able to obtain the laws of Florida. The Legislature of New Hampshire is still in session. The session laws of Louisiana of 1886 were not printed in time to enable my predecessor in office to report upon them. I have, therefore, to review the legislation of Congress and the following thirty-two States: Alabama, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin.

As my predecessors in office had established the practice of commenting on statutes as noteworthy in particular States,

although not so in respect to other States, and as it had been the custom to call attention to statutes which had no direct relation to the science of jurisprudence or the administration of justice, I felt very much embarrassed in dealing with so many States. I could have compressed the review within reasonable limits, either by grouping States or by the classification of the subjects of legislation, but so many Legislatures protracted their sessions until late in the season I could not procure the statutes in time to pursue that course. As it is, in many instances I have had recourse to advanced sheets of the statutes as they came from the press, without any index, and in the case of Delaware I have relied on an abstract taken from the parchment rolls in the archives of the State by the member of the General Council representing that State.

I was, therefore, compelled to treat each State separately, and if in so doing I trespass on your patience you must blame the command of the Constitution, the practice of my predecessors in office, the custom sanctioned by yourselves, the immense mass of legislation to be brought to your notice, and the inability of a large majority of the members of the General Council to communicate to the President, as enjoined by the Constitution, the changes in the statutes of their respective States.

This inability is principally to be attributed to the delay in the publication of the statutes. There were several laws of a general nature enacted by Congress during the past year which merit our attention.

The Act of March 3d, 1887, to regulate the removal of causes from State courts, to further regulate the jurisdiction of Circuit Courts, and for other purposes, takes from those courts the cognizance of any civil suit unless the matter in dispute exceeds $2,000, exclusive of interest and costs.

Nor can any suit be brought against any person by any original process of procedure in any other district than that whereof he is an inhabitant, unless the jurisdiction of the court is founded only on the fact that the action is between

citizens of different States; then the suit must be brought in the district where the plaintiff or the defendant resides.

Nor can an assignee or subsequent holder of a chose in action bring suit in the Circuit Court unless such suit could have been brought if no transfer had been made. The only exceptions to this rule are assignees of foreign bills of exchange and transferees of choses in action issued by any corporation payable to bearer.

The regulations as to the removal of causes are:

1st. No suit can be removed from a State court unless the matter in dispute exceeds $2,000, exclusive of interest and costs.

2d. It can be removed only by the non-resident defendant except where the suit is between citizens of the same State, and the jurisdiction of the Circuit Court depends on grants of land by different States.

3d. When in any suit there is a controversy wholly between citizens of different States, which can be fully determined as between them, then either one or more of the defendants interested in such controversy may remove the suit.

4th. The application for removal must be made before or at the time the defendant is required by the laws of the State to plead, except where the ground of removal is local prejudice, or when jurisdiction of the Circuit Court depends on grants of land by different States, as above stated.

5th. Removal on the ground of local influence or prejudice is allowed to the defendant only in suits where the plaintiff is a citizen of the State in which the suit is brought and the defendant is a citizen of another State. The affidavit in such case must state that the defendant cannot obtain justice in the State court in which the suit is brought, nor in any other court of that State to which under its laws the defendant on account of prejudice or local influence might have the right to remove the cause; the affidavit of the petitioner is not conclusive, and the Circuit Court, if not satisfied with its

truth, may remand the cause to the State court. If there be several defendants, and the suit can be tried separately in the Circuit Court without prejudice to the parties, that court may remand the suit to the State court as to the defendants not affected by local influence or prejudice, and retain jurisdiction of the cause as to the other defendants.

This act also takes away the right to an appeal or writ of error to review the decision of the Circuit Court remanding a cause to the State court.

The other purposes referred to in the title of this act are developed in §§ 2, 3, and 7.

Section 2 requires receivers or managers in possession of property in any cause pending in any court of the United States to manage and operate such property according to the requirements of the laws of the State in which the property is situated, in the same manner as the owner would be bound to do if in possession.

Section 3 allows suit to be brought against a receiver in respect of any act or transaction of his in carrying on the business connected with the property in his charge without the previous leave of the court which appointed him; such suit to be subject to the general equity jurisdiction of the court which appointed the receiver, so far as may be necessary to the ends of justice.

This section modifies the law as expounded by the Supreme Court of the United States, and it restores to suitors the right of trial by jury.

Section 7 is leveled at nepotism; it provides that no person related to any justice or judge of any court of the United States by consanguinity or affinity within the degree of first cousin shall be appointed to any office or be employed by such court or judge in any duty in any court of which such justice or judge may be a member.

On March 3d, 1887, Congress repealed the Tenure-of-Office Act, which it had passed twenty years before.

The repeal of this act is at least a recognition of the wis-

dom of our ancestors, who believed that the power of removal was incident to the power of appointment.

The Act to Regulate the Counting of Votes for President and Vice-President, and the decisions of questions arising thereon, deserves commendation, because it contains a recognition of the principle that Presidential electors are State officers, whose appointment is to be determined by State authority; and it precludes the creation of extra constitutional tribunals to determine a contested election.

The Act to Regulate Commerce, commonly called the Inter-State Commerce Law, is so well known, and has been the subject of so much discussion, I will not dwell upon its provisions. The interpretation of the long and the short haul section seems to have given most trouble to those who are charged with the execution of the law, as well as to those who are expected to obey it. To determine what are "substantially similar circumstances and conditions" is no less difficult than the definition of the special cases in which the commission may authorize the common carrier to charge less for longer than for shorter distances. I cannot refrain from calling to your attention the phraseology of the sixth section, which provides for the issue against the offending carrier of a writ of mandamus "in the name of the *people* of the United States." I know of no other instance in which judicial process is issued, or judicial procedure is conducted, in the name of the *people* of the United States. The expression is calculated to arouse the attention of those familiar with the constitutional controversies which agitated the Republic in its earlier days.

Congress also passed an act to provide for bringing suits against the Government. It enacts that the Court of Claims shall have jurisdiction to hear and determine—

1st. All claims founded upon the Constitution of the United States or any law of Congress, except for pensions, or upon any regulation of an Executive Department, or upon any contract, express or implied, with the Government, or

for damages liquidated or unliquidated in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States in a court of law, equity, or admiralty if the United States were suable, but war claims and claims heretofore rejected by any court, department, or commission authorized to hear them are excepted.

2d. All set-offs, counter claims for damages, or other demands whatsoever, on the part of the Government, against any claimant in said court.

But no suit against the Government is allowed unless brought within six years after the right accrued.

The Circuit and District Courts are vested with jurisdiction concurrent with the Court of Claims—the Circuit Courts, where the amount of the claim does not exceed $10,000, and the District Courts, where the amount of the claim does not exceed $1,000. The causes are to be tried without a jury, and either party is allowed an appeal or writ of error, as in other suits.

A provision has been introduced into the act, whereby a party who is or has been indebted to the Government, or his surety or representative, may by suit compel an ascertainment or adjustment of the debt, or a settlement of accounts, and obtain a final discharge.

The Anti-Polygamy Act has been amended. In prosecutions for bigamy the lawful spouse, although made a competent witness, cannot be compelled to testify without the consent of the other spouse; but confidential communications made by either spouse to the other during marriage are protected from disclosure.

Adultery is punished by imprisonment in the penitentiary not exceeding three years; both parties are declared guilty of adultery if the woman be married though the man be unmarried; but if the man be married and the woman unmarried the man alone is to be deemed guilty.

Every ceremony of marriage in any of the Territories of the United States, whether the parties be lawful subjects of

such ceremony or not, must be certified by the person who performs it, and signed by the parties, and filed in the Probate Court.

The laws of the Territory of Utah which recognize the capacity of illegitimate children to inherit the estate of their father are annulled. A widow in that Territory is endowed with the third part of the lands whereof her husband was seized during marriage and women are deprived of the right of voting.

Congress also passed an act to establish experiment stations in connection with the agricultural colleges established in the several States, and an act to restrict the ownership of real estate in the Territories and in the District of Columbia to American citizens. The latter act makes it unlawful for an alien who has not declared his intentions to become a citizen or a foreign corporation thereafter to acquire or hold real estate, except such as may be acquired by inheritance or in the ordinary course of justice in the collection of debts contracted prior to its passage; but the prohibition does not apply to foreigners whose right to hold real estate is secured by treaties now existing, so long as such treaties are in force.

No corporation, more than twenty per cent. of the stock of which is owned by foreigners, is allowed to acquire real estate; and no corporation, other than railway, canal, or turnpike corporations, is allowed to acquire more than five thousand acres of land; railway, canal, or turnpike corporations may hold lands necessary to the accomplishment of the objects of their creation and such lands as Congress may grant to them, but the act is not to affect lands acquired prior to its passage.

Several of the Northwestern States have adopted the policy of Congress in regard to the acquisition of lands by aliens, and have supplemented Federal legislation by passing laws similar in principle. Colorado, Illinois, Minnesota, Wisconsin, and Nebraska have imitated the example of Congress. The Colorado prohibition applies only to the acquisition of

agricultural, arid, or range lands, and does not affect the holding of any land the assessed value of which does not exceed $5,000.

The prohibition in Nebraska does not apply to lands necessary for the construction and operation of railroads; nor in Minnesota does it apply to actual settlers on farms of more than one hundred and sixty acres; in Wisconsin, however, an alien may hold three hundred and twenty acres of land.

Illinois has added to the severity of congressional legislation by a provision that no lease of any land for the purpose of farming and raising crops thereon, made by an alien landlord, shall contain any provision requiring the tenant to pay taxes, and if anything is received in advance from the tenant in lieu of taxes he may recover it back.

ALABAMA.

This State is only exceeded by North Carolina in the bulk of its legislation. The Acts of North Carolina make a book of eleven hundred pages, while those of Alabama are compressed in a volume of one thousand and thirty-eight pages. This extraordinary legislative activity is due in both States to the vicious system of enacting local and special laws, and to a wonderful development which calls into existence numberless private corporations. As a sample of the intensely local legislation of North Carolina, I mention an act to restrict the catching of fish in Bynum's Mill Pond, in Edgecombe County, in any manner or way, except with hook and line, or by drawing off the water and taking out the large fish for the purpose of improving the fish in the pond.

A partial corrective of the evil in Alabama may be found in the proposed amendment to the Constitution of that State, which is to be submitted to the people at the next general election. It provides "that no bill which does not apply to the whole State (except bills creating and regulating municipal corporations, and bills fixing the time of holding the courts and prescribing rules of procedure therein) shall be

introduced into either house of the Legislature after the twentieth legislative day of the session, nor shall any such bill be considered or passed after the thirty-fifth legislative day of the session; nor shall any bill which applies to the whole State be amended by either house after the twentieth legislative day of the session, so as to confine its operation to a part of the State."

The State of Alabama seems to ignore the maxim, that it is the interest of the Republic to end litigation, if its policy is expressed in the act which requires the Supreme Court in deciding each case, when there is a conflict between its existing opinion and any former ruling in the case, to be governed by what in its opinion at that time is law, without regard to such former ruling of the law by it, but the right of third persons acquired on the faith of the former ruling is not to be defeated or interfered with by or on account of the subsequent ruling.

Women may be appointed notaries public, but not with the power and authority of justices of the peace. Alabama hesitated to intrust the judicial scales to feminine hands. I suppose the legislators thought women's eyes were never blind. The common law as to the effect of marriage on the rights and liabilities of husband and wife has been superseded by an act which declares that all the property of the wife, held by her at the time of her marriage, or which she may in any manner acquire after her marriage, is her separate property and is not subject to the liabilities of her husband; that her earnings are her separate property, also all damages she may be entitled to recover for injuries to her person or property; that the husband is not liable for the ante-nuptial debts of the wife, nor for her post-nuptial contracts or torts; that the wife may sue and be sued as if she were sole; she has capacity to contract with the assent of her husband in writing; she may, with similar consent, recorded in the Probate Court, pursue any trade or business as if she were sole; and to obliterate the last vestige of the oneness of man and

wife, the statute, with revolutionary disregard of the doctrine taught by the year-books, "*eadem coro vir et uxor*," proceeds to authorize the husband and the wife to contract with each other, but all contracts into which they enter are subject to the rules of law as to contracts between persons standing in confidential relations. The only contract she is forbidden to make is that of suretyship for her husband.

Among other statutes of interest is an act limiting the duration of lien on lands resulting from the registry of a judgment or decree to ten years from the date of registry; also an act which declares void as to third persons having no notice all absolute conveyances as well as all mortgages of real estate to secure debts created at the date thereof unless recorded within thirty days from their date; also an act to authorize the acceptance of a certain class of corporations as surety on official bonds; also an act which requires the court in the cases of larceny, embezzlement, and other like offenses, where the defendant is found guilty, to assess the value of the article stolen or embezzled as part of the costs, and when the costs, including such value, are paid or worked out at hard labor, the County Court is to pay the owner such value out of the fund arising from the proceeds of such labor; also an act for the recusation of judges on account of interest or relationship to the parties by consanguinity or affinity in the fourth degree, or on account of having been of counsel, or of having prepared or signed any instrument the construction or validity of which is involved in the cause; also an act to prevent extortionate charges for the trespassing of cattle on the lands of another; the owner of the cattle by tendering what he considers the amount of damage done can subject the complainant to all costs of suit in case the amount tendered turns out to have been adequate compensation for the damage; also an act which provides that in all contracts for the sale of commercial fertilizers in which an excessive price is put on the article sold, with a stipulation that if paid for on or before a certain date it may be paid in a smaller

sum than the price fixed in the contract, the difference between the excessive price fixed in the contract and the real market value shall be deemed a penalty and only the real market value can be recovered.

Railroad companies are required to provide for the comfort and accommodation of passengers at each station, and to keep a register of the animals injured or killed by their trains at the station nearest to the accident; they are forbidden to employ any person in a position which requires the use or discernment of form or color signals unless he possess a certificate from the State Board of Health of his fitness therefor, in so far as color-blindness and visual powers are concerned; nor can any locomotive engineer be employed unless licensed after examination by a State Board of Examiners, composed of five skilled mechanics appointed by the Governor.

It is made a penal offense to compel a child under eighteen years of age or a woman to labor in a mechanical or manufacturing business more than eight hours a day, or to permit a child under fourteen years of age to work therein longer than eight hours a day, and the employment of children under fifteen years of age in coal or iron mines is prohibited.

The sale of adulterated sugar, lard, molasses, butter, or other article of food, unless branded as such, is punished by fine and imprisonment. This State has adopted a revision and codification of its public statutes, both civil and criminal, which is to go into operation in thirty days after the proclamation of the Governor announcing its publication.

ARKANSAS.

This State has enacted that an assignment for the benefit of creditors may be attacked for fraud by any creditor, and proof of fraud on the part of the assignor shall be sufficient to invalidate the assignment, whether the assignee knew of it or not. An action to enforce a mortgage or deed of trust is barred, if not brought within the period of limitation prescribed for suit on the debt or liability secured. In suits to

set aside fraudulent conveyances and to obtain equitable garnishments, it is not necessary that the plaintiff should recover a judgment at law to prove insolvency; that fact may be proved by any competent testimony, so that only one suit is necessary. Judgment rendered on constructive service of process may be reopened at any time within two years and a new trial had, and upon the new trial the court may confirm its judgment or order the plaintiff to restore what he has received under it. The law which authorizes a mortgagor to waive the right of appraisement, sale, or redemption of the property mortgaged has been repealed.

A contract for a greater rate of interest than ten per cent. per annum is declared usurious and absolutely void; and every lien or mortgage securing the same, and every conveyance in furtherance of such lien, may be annulled at the suit of the borrower or his vendees, assigns, or creditors, even as against a *bona fide* purchaser for value without notice; and no tender of payment of any part of the usurious debt need be made. All persons claiming under the tender, whether the evidence of debt be negotiable or not, and whether they have notice or not, stand on the same foot as the lender.

Another statute provides that the Probate Court of each county shall, once every year, examine the bonds of all executors, administrators, guardians, and curators on file in the county, and if for any cause any bond is insufficient, the court shall make an *ex parte* order that a new bond be furnished; failure to comply with the order to the satisfaction of the court within ten days after notice thereof operates *ipso facto* a revocation of the letters issued to the fiduciary.

The noteworthy penal legislation of Arkansas is embraced in an act abolishing the public execution of persons condemned to death.

An act making it unlawful for railroad or transportation companies to grant free passes to any officer of the State, legislative, executive, or judicial. The company granting any such pass is subjected to a fine of not less than $200 nor more

than $2,000, and the officer accepting the pass is declared guilty of a misdemeanor, the consequences of conviction being removal from office, and a fine not less than $25 nor more than $200. An act punishing the keepers and employees of any dram shop or saloon who permit minors to play in such shop or saloon any game of cards, billiards, pool, or any other game; and an act to punish any person who by false pretenses shall obtain a certificate of registration in the herd register of any association for the improvement of the breed of cattle and other animals, and any person who shall knowingly give a false pedigree of any animal.

Similar laws in regard to the registration and pedigree of animals have been enacted this year in Tennessee, New Jersey, Ohio, Missouri, Illinois, Alabama, Minnesota, Nevada, Rhode Island, Maine, Massachusetts, Connecticut, Pennsylvania, Delaware, and Michigan.

The severity of the punishment which may be inflicted in Arkansas, Tennessee, and New Jersey, indicates a high appreciation in those States of blue-blooded horses and cattle, and the importance attached to the preservation of the family history of aristocratic sheep and swine. It seems rather harsh to imprison one in the penitentiary for manufacturing the pedigree of a pig, when he may forge with impunity the family tree of a man.

The railroad legislation of Arkansas is peculiar. An act has been passed which makes it unlawful for any citizen or corporation of any other State or county to build, lease, maintain, or operate a railroad in the State; any person or corporation of any other State or county operating a railroad within the State is required within thirty days from the passage of the act to organize a corporation under the State laws, and to transfer the title to so much of the railroad as is in the State to this State corporation. If the company fails to comply with the law, the Attorney-General is required to file a bill in the Chancery Court of Pulaski County against the company, and the court is directed to issue an order re-

straining all persons named or unnamed from further building or operating the road; service of such order on any person subjects him, in case of disobedience, to a fine of $10,000 and to imprisonment until the fine is paid; if within thirty days after the service of the restraining order the railroad company does not comply with the law, the Governor is directed to take possession of the road, and, after twenty days' notice, to lease it for five years to the highest bidder, who is a citizen or corporation of the State, to be operated as an independent road. Consolidation with a railroad in an adjoining State is allowed, but the consolidated corporation shall become a corporation of the State. Consolidation is only permitted between corporations the union of whose roads will make a continuous line; consolidation with parallel or competing lines is prohibited.

Another act regulates railroads on principles similar to those which form the basis of the Inter-State Commerce Act passed by Congress; no director, officer, agent, or employee of a railroad is allowed to be interested in any contract with the company for furnishing supplies or material to it, or for the transportation of freight or passengers, on better terms than those accorded to the public. Another act regulates the rate of charges for the carriage of passengers; the rate on a line of railroad fifteen miles or less in length is eight cents per mile; on a line over fifteen and less than seventy-five miles in length it is five cents per mile; on lines over seventy-five miles in length it is three cents per mile, and half price for children under twelve and over five years of age. Another act gives a lien on the railroad, its equipments, income, and franchises, superior to all mortgages, to any person who shall perform work upon the road or furnish materials or machinery to it, and to all persons who shall sustain loss to person or property for which a legal liability may exist; to make the lien effectual, suit must be brought on the claim within one year after it accrued.

CALIFORNIA.

In California there are two acts leveled at the Chinese, one to prevent the use of a stamp or label on goods manufactured by Chinese labor designating them as the product of other labor, the other making it unlawful for State, city, or county officials in charge of any public institution to purchase for the use of such institution supplies manufactured or grown in the State which are in whole or in part the product of Mongolian labor.

An effort has been made to maintain the purity of California wine by enacting regulations for its manufacture and forbidding the sale of spurious mixtures as pure California wine.

The most noteworthy act is that which authorizes executors and administrators, with the approval of the court, after notice to all parties having an interest, to mortgage or lease the real estate of the deceased, the term of the lease not to exceed five years.

CONNECTICUT.

This State, recognizing the correct principle that a mortgage is but a pledge, passed an act to authorize a decree of sale at the discretion of the court, instead of the old-fashioned, strict foreclosure. It has authorized the mortgagee of real property, upon which there is insurance made by the policy payable in case of loss to him, to make proof of the loss in case the mortgagor fails to do so within three months after the fire. The substituted proof of loss is made under judicial supervision after due notice to the mortgagor.

A singular act has been passed which forbids any life insurance company doing business in the State to make any distinction or discrimination between white persons and colored persons as to the premiums or rates charged for policies upon the lives of such persons. Statistics establish the fact that the death-rate among colored persons in the United States is much higher than that of the white race, hence the risk is

greater on the life of a colored than on that of a white person. The death-rate of the white people in the United States is about fourteen per thousand, while that of the colored population is about seventeen per thousand. There is no appreciable difference in this respect between the Northern and the Southern States. The white population of the Southern States, east of the Mississippi River, including the District of Columbia, is about eight millions; the number of deaths in those States, recorded in the year 1880, is about one hundred and thirteen thousand, or about fourteen per thousand; the colored population of the same States is about five million, the number of deaths in the same year is about ninety-one thousand, giving a death-rate of about seventeen per thousand; nevertheless, so prolific are the colored people, that, notwithstanding this excessive mortality, they increase in the Southern States nine per cent. faster than the white race.

The greatest disparity in the death rates of the two races in the South is in the number of the deaths under five years of age, and the mortality of the negro children is more than double that of the white. The diseases which cause the excess of mortality among the colored adults are consumption, pneumonia, heart disease, dropsy, scrofula, and small-pox. If the superior sanitary condition of the colored population in Connecticut does not justify this law, perhaps the paucity of that population may prevent insurance companies there from feeling the effects of its operation.

Connecticut has also passed laws for the inspection of factories and for the protection of life and health in the same; to subject to inspection boarding-houses for infants under ten years of age; to compel the attendance of children at school, and if they attend a private school, to require the teacher having control of the school to keep a register of attendance, which shall be open to the inspection of the State Board of Education; to regulate the sale of poisons; to prohibit the sale of imitation butter unless branded as such; to prohibit the sale of molasses adulterated with glucose, starch, or any

preparation of starch; to provide for the weekly payment of wages to the employees of corporations; to limit the labor of women and of minors under sixteen years of age to ten hours a day, or sixty hours a week; to punish blackmail by imprisonment in the penitentiary or jail for a term not exceeding ten years, or by fine not exceeding $5,000.

I must not omit the act for the punishment of incorrigible criminals. A person tried, convicted, sentenced, and imprisoned in the State prison for any crime, for which the minimum punishment is two years imprisonment in the State prison, who shall thereafter be convicted, sentenced, and imprisoned in the State prison for any crime for which the minimum punishment is two years' imprisonment in the State prison, is to be deemed incorrigible, and at the expiration of his sentence shall be detained in the State prison for the further term of twenty-five years, unless pardoned or allowed to go at large on parole.

After the expiration of the third sentence, the Board of Directors of the State prison may allow him to go at large on parole, and while so at large he is in the legal custody of said Board, subject at any time to be taken back to prison. The written order of the Board is sufficient warrant to authorize a police officer to return the incorrigible to actual custody.

I rather fear that the locomotive whistle which the recent Sunday act allows to be sounded on Sunday trains will make the forefathers of Connecticut turn in their graves. Sunday trains, it is true, are prohibited between sunrise and sunset, except when run from necessity or mercy, but the proviso says it is necessary to run Sunday mail trains at any time before half-past ten in the morning and after three o'clock in the afternoon, and that the Railroad Commissioners may allow freight trains to run when required by public necessity or for the preservation of freight.

As compensation for this enormity, however, I find on the next page a statute which imprisons every man who shall willfully abandon and neglect or refuse to support his wife

and cohabit and live with another woman. The term of imprisonment is not more than three years, and it may be in the State prison or in the common jail—a wide latitude of discretion. Perhaps the youth and beauty of the deserted wife were intended to be taken into account in fixing the punishment; perhaps the legislators thought that a gay Lothario who abandons a wife old enough to be his mother should be sent to jail for a short period, while the inexcusable desertion of a young and lovely spouse by an old bachelor, who had postponed marriage until his heart had become desiccated, could only be atoned for by imprisonment for three years at hard labor in the penitentiary. Connecticut has also adopted a revision of its general statutes which was reported to the General Assembly by a commission appointed for that purpose, and I am informed it was enacted by a confiding Legislature without examination.

COLORADO.

This State has adopted a code of procedure containing four hundred and forty-five sections. It abolishes the distinction between actions at law and suits in equity, and from the similarity of its provisions to those found in the codes of other States, I presume it was derived from them. The chattel mortgage law has been amended, so as to require the mortgagee, when the amount of his debt exceeds $2,500, to record every year a sworn statement that the mortgage was given in good faith to secure the sum of money therein mentioned, and that it remains unpaid in whole or in part, as the case may be. If the mortgagor conceals or disposes of the property mortgaged without the consent of the mortgagee he is declared guilty of larceny. Children under fourteen years of age cannot be employed in any underground works or mines, or in any smelter, mill, or factory; the black-listing of employees for the purpose of preventing them from engaging in or securing employment similar to that from which they have been discharged

is prohibited; the sale of dynamite and other high explosives has been regulated; the fair and orderly conduct of primary elections or of nominating conventions is secured by proper penalties, and incorporated employers of help are fined for any attempt to influence or control the votes of their employees.

The private detective business cannot be carried on without license, the licensee being required to give bond in such amount as the Governor may fix, not less than $3,000 nor more than $20,000, conditioned that the principal will honestly, lawfully, and faithfully, without oppression and without compounding any criminal offense, carry on the detective business. The same act makes it a penal offense for a licensed detective or his employer to induce the confession of crime by threats, torture, or promise of immunity.

Every foreign corporation engaged in selling news items or press reports is required to appoint an agent in the State on whom process can be served. The act obliges such corporation or its agent to file with the Secretary of State every six months a schedule of prices, and to supply news items and press reports to any applicant at the schedule prices, and forbids discrimination in prices or celerity of delivery.

Another act commands the children of the public schools to be taught the nature of alcoholic drinks and narcotics and their effects upon the human system, while the amended liquor law prohibits the sale of whisky for drinking purposes unless it is two years and nine months old.

Another act provides for the commutation of life sentences, the same as if sentenced for the term of the expectation of life of such convict, based on the Carlisle mortality tables less the allowance for good time, and at the expiration of such period he is to be discharged, but the expectation of life in no case is to be estimated at less than ten nor more than twenty-five years.

The last act to which I shall call your attention declares that any person who shall be a party to a fraudulent sale or

conveyance of any lands, goods, or chattels, or any interest therein, or who shall conceal or remove or dispose of any personal property, or shall be a party to any bond, suit, contract, judgment, execution, or conveyance, had, made, or contrived with intent on the part of said parties to defraud, or to hinder and delay creditors, shall, on conviction, be imprisoned in the penitentiary for not more than three years.

DELAWARE.

Forty-four divorce acts have been passed by the Legislature of Delaware. This activity in divorcing married persons should induce the people of that State to withdraw the marriage-dissolving power from the legislative and intrust it to the judicial department of the government, where it properly belongs. As some compensation for the evil inflicted on society by the liberal exercise of the divorce power an act has been passed to prevent the desertion and to secure the maintenance of married women and of minor children. Upon proper complaint the court may order the deserting husband or father to pay not exceeding $100 per month for the support of wife or children, as the case may be, and to give security therefor, and to be committed to the county jail until the order is complied with or until his discharge by the court.

An act has been passed to create a street and sewer commission for the city of Wilmington, thereby divesting the City Council of the power to manage and control its streets and sewers. I notice the act as an unusual invasion of the domain of municipal authority, suggestive of a condition of things which might justify the establishment of a commission to govern the city.

Heretofore separate colored schools in this State were supported by such appropriations as the Legislature might make, but this year an act has been passed to support such schools by general taxation. The Legislature has increased the salary of all the judges of the State; it has passed an act to pre-

vent fraud at primary elections, an act to punish by severe penalty the sending of threatening letters or the use of other blackmailing devices; also an act to prohibit the playing of games of chance in houses kept therefor in the presence of minors under eighteen years of age; also an act to prevent the adulteration of dairy products and fraud in the sale thereof, and an act which makes it unlawful to practice medicine or pharmacy without registry or license. Nearly all the States have adopted a similar law; most of them have included dentistry, and some have extended the principle to veterinary surgeons. Indeed, some States have created the office of "State Veterinary Surgeon" to aid the enforcement of their legislation to prevent the spread of contagious diseases among animals.

GEORGIA.

The Legislature of Georgia assembled on the first Monday in November, 1886, and on 22d of December took a recess until the first Wednesday in July. It is now in session.

Two noteworthy acts were passed, one of which prohibits marriages within the Levitical degrees of consanguinity, or between a man and his stepdaughter, or mother-in-law, or daughter-in-law, or stepmother, or granddaughter of his wife, or a marriage by a woman with her corresponding relatives. Such marriages are declared void and the parties to them are subject to prosecution for incest. The other act provides that a will executed by a person competent under the laws of Georgia to make a will, who is a resident and citizen of any of the United States other than the State of Georgia, shall be admitted to probate as a valid will of real and personal estate, provided the will be executed in conformity to the laws of the State where the testator resided at the time of its execution, and provided it be admitted to probate according to the laws of such State.

This act is imperfect, inasmuch as it omits the Territories of the United States, and it only applies to citizens and there-

fore excludes domiciled foreigners. Besides, the act does not go far enough; why not adopt the principle expressed in Article 1596 of the Civil Code of Louisiana, which declares that "testaments made in foreign countries or in the States and Territories of the Union shall take effect in this State, if they be clothed with all the formalities prescribed for the validity of wills in the place where they have been respectively made"? This provision is universal; it includes even citizens of Louisiana while on a visit abroad. Why should not the principles applicable to contracts govern the execution of wills?

ILLINOIS.

I know of no other State which has so thoroughly accepted the belief that a cross in the blood is necessary to the improvement and development of the race, for Illinois has prohibited marriage between first cousins, and denounced it as incestuous and void; the prohibition even extends to illegitimate relations.

In the classification of claims against the estate of a deceased person, "the wages due a servant or laborer for labor performed for the deceased within six months previous to death" are placed in the same class with trust moneys, to which a preference is given over general debts and demands. In case the property of any corporation, firm, or person is seized under judicial process, or the business suspended, or put in the hands of a receiver, debts due to laborers and servants which have accrued by reason of their labor and employment, to an amount not exceeding $50 for labor performed within six months next preceding the seizure or suspension, are treated as preferred debts to be paid in full.

Laws have been passed to enable corporations organized under the general laws of the State to transact a surety business and to become sureties on bonds, to provide for the incorporation of co-operative associations for the prosecution of any branch of industry, and to regulate the administration of trusts by trust companies.

This State has also endeavored by legislation to prevent the spread of contagious diseases among animals, and to extirpate pleuro-pneumonia, and its officers are required to cooperate with the authorities of the United States to enforce the provisions of the Act of Congress on the same subject. I notice the pleuro-pneumonia act became a law without the approval of the Governor; perhaps the Governor is of the States' rights school, and stands upon the doctrine that State officers should not be required to execute Federal laws.

Two acts in regard to mines make careful provision for escaping shafts, ventilation, hoist-ways, timber-props, and for the weighing of coal at the mines.

Bookmaking—that is, keeping a book in which bets are registered—as well as pool-selling, is prohibited; the penalty is a fine not exceeding $2,000, or imprisonment in the county jail not exceeding one year, or both.

The abandonment of a child by its parents, or other person having legal control thereof, is punished by a fine not exceeding $1,000, or imprisonment in the penitentiary not exceeding three years.

The sale of tobacco in any form to minors under sixteen years of age is made a misdemeanor.

Dealing in future contracts for stocks, bonds, petroleum, cotton, grain, provisions, or other produce, where there is no intention to deliver the property sold, is made a misdemeanor, and it is unlawful to keep a store, or office, or bucket shop for the purpose of conducting such business.

To entice or induce a chaste, unmarried female by false pretenses to enter a house of prostitution, or improper dance house, or garden, is a felony punishable by imprisonment in the penitentiary for not less than one nor more than ten years.

The riot act has been perfected, and definite regulations have been made for the government of the military forces of the State and of the *posse comitatus* when called out by the proper officials to quell a riot. The conspiracy law has been

revised and amended and an additional act passed on that subject. This additional act provides that if two or more persons shall conspire to do an unlawful act, dangerous in its character to human life, or to person, or to property, or if its accomplishment will probably require the use of violence, which may result in the taking of human life or injury to person or property, every party to such conspiracy shall be held criminally liable for whatever offense any one or more of his co-conspirators shall commit in furtherance of the common design.

It further enacts that if any person shall, by speaking to any public or private assemblage of people, or by writing or printing, or causing to be written or published, any written or printed matter, advise, incite, aid, or abet a local revolution, or overthrow of the existing order of society by violence, or the resistance to and destruction of the lawful power and authority of the legal authorities of the State, or of any city, town, or county, by force or violence, or shall by any of the means aforesaid incite, aid, or abet the disturbance of the public peace, and by such disturbance attempt at revolution, or resistance to such authorities, shall thereafter ensue, and human life is taken, or any person is injured, or any property destroyed by any person, or by any of the means employed to carry into effect the purpose so advised, incited, or abetted, every person so advising, inciting, aiding, or abetting shall be deemed as having conspired with the person who actually commits the crime and shall be punished as a principal, and it shall not be necessary for the prosecution to show that the speaking was heard or the written or printed matter was read by or communicated to the person actually committing the crime, if such speaking, writing, or printing is shown to have been done in a public manner.

Another section provides that where a crime is committed, under the circumstances above mentioned, each conspirator shall be punished as a principal, notwithstanding the time and place for bringing about the revolution or overthrow of

public order had not been definitely agreed upon by the conspirators, but was left to the exigencies of the time, or the judgment of the co-conspirators or any one of them.

To establish the conspiracy it is not necessary to prove that the parties ever came together or entered into any arrangement; it is sufficient if it appear that the parties charged were actually pursuing in concert the unlawful purpose, whether acting separately or together, at the same or different times, by the same or different means, provided the acts of each were knowingly tending to the same result.

Another act prohibits the manufacture of dynamite or other explosive compounds within one mile of an inhabited dwelling; such manufacture carried on anywhere in the State without a permit is forbidden; if any person shall manufacture dynamite or other explosive compound, with the intent that the same may be used for any unlawful injury to or destruction of life or property, he is declared guilty of a felony, and on conviction shall be imprisoned in the penitentiary for not less than five nor more than twenty-five years.

So any person aiding or assisting in such manufacture, or in buying, selling, storing, transporting, procuring, or disposing of dynamite or other explosive compound, either by furnishing the materials, ingredients, means, skill, or labor, or by acting as agent, or in any manner acting as accessory before the fact, having reason to believe that the same is intended to be used for the unlawful injury to or destruction of life or property, shall be deemed a principal, and shall be subject to similar punishment.

INDIANA.

The Legislature of the State of Indiana is entitled to great praise, for it has passed but thirty-eight acts, public and private, which are compressed into sixty-two pages of printed matter. The only noteworthy act passed by this State is that requiring corporations engaged in mining coal, ore, or other mineral, or in manufacturing any article of merchan-

dise, to pay each employee at least once every two weeks in cash; payment of wages in checks, cards, or other paper which is not a bank check, or commercial paper payable in bank at a fixed time, is prohibited, and it is made a misdemeanor to sell supplies or merchandise to the employee at a higher price than such corporations, firms, or persons sell to others for cash.

KANSAS.

The Legislature of Kansas has passed an amendatory act to carry into effect the constitutional provision prohibiting the sale of intoxicating liquors, except for medical, scientific, and mechanical purposes. It is especially aimed at druggists, and prescribes stringent regulations to prevent them from evading the prohibitory law, and it contains a clause providing for the cancellation of a druggist's permit by the probate judge on a petition signed by twenty-five reputable men and twenty-five reputable women residing in the township, city, or ward in which the business of the druggist is carried on, complaining that he has not in good faith conformed to the provisions of the act.

Another act confers on women the right to vote at municipal elections, and makes them eligible to any city or school office.

For the purpose of encouraging the manufacture of sugar from beets, sorghum, or other sugar-yielding canes or plants grown in the State a bounty of two cents per pound is paid, provided the amount thereof in any one year shall not exceed $15,000. The law in regard to rape has been amended so as to raise the age of consent to eighteen years. Solicitude as to this crime has occasioned legislation this year in several States. In Ohio, Illinois, Wisconsin, Connecticut, and Vermont the age of consent has been raised to fourteen years, and in Pennsylvania, Michigan, and New Jersey to sixteen, and in Nebraska to fifteen years. Kansas also passed an act to enforce the payment in cash of wages due for labor. This act pro-

hibits the issue to employees of tickets or tokens, or the use of any means to coerce them to purchase supplies or goods from any particular person, firm, or corporation.

LOUISIANA.

A Sunday law has been passed in Louisiana closing all places of business on Sunday, but the provisions of the act do not apply to newspapers or printing offices, book stores, drug stores, undertaker shops, public or private markets, bakeries, dairies, livery stables, railroads, hotels, boarding-houses, steamboats and other vessels, warehouses for receiving and forwarding freights, restaurants, telegraph offices, theatres, or any place of amusement, providing no intoxicating liquors are sold on the premises. The sale on Sunday of alcoholic, vinous, or malt liquors is absolutely prohibited, except wine for table use in hotels. The employment of women and children has been regulated; no boy under twelve and no girl under fourteen years of age can be employed in a factory, workshop, or workhouse; no child under fourteen years of age can be employed in certain enumerated occupations, unless the child has attended school at least four months next preceding the employment; a day's work for young persons under eighteen years of age, and for women in a factory, or workshop, or clothing, dressmaking, or millinery establishment, is ten hours, one of which is to be allowed for dinner. A day's labor on street railroads is fixed at twelve consecutive hours, with reasonable intervals for meals. Employers are required to furnish seats for their female employees, to be used by them when not necessarily engaged in active duty. The prospective obligation of a surety on official bonds terminates six months after his death, the officer being required to furnish a new surety, otherwise his office is vacated, as in case of resignation. Such surety may also, after the lapse of one year from the execution of the bond, withdraw therefrom on giving the principal thirty days' notice to furnish a new bond;

failure of the officer to give a new bond within the time specified operates as a resignation of the office.

Privileges or liens of creditors on crops are ranked as follows: first, the labor; second, the lessor; third, the manager; fourth, the pledgee; fifth, the furnisher of supplies or money and the physician.

In any civil suit wherein the writ of arrest, attachment, sequestration, provisional seizure or injunction may be issued, the defendant may by reconversion or counter-claim recover the damages he may have sustained by the illegal resort to such writ.

The defendant is made a competent witness in criminal cases, but he cannot be compelled to testify. The allowance of any rebate by insurance companies is probibited; the net premium must be expressed in the policy.

The sale of commercial fertilizers has been regulated; such fertilizers cannot be sold until the dealer has filed with the Commissioner of Agriculture a statement setting forth the name and brand of the fertilizer, the number of pounds contained in the package, the name of the manufacturer and the place of manufacture, and the character of the ingredients which he is willing to guarantee the fertilizer contains; this statement is declared to be a guaratee to every purchaser.

The sale of oleomargarine or of any other substance than the product of the cow as butter is prohibited.

It is made unlawful to introduce into the State any substance which, in the opinion of the Board of Health, may produce a liability to contagion or infection of any disease among the people, whether the same shall be in the form of bacteria germs, microbes, virus (vaccine virus excepted), or other substances claimed to contain the elements of any infectious or contagious disease, whether introduced for the purpose of inoculation or otherwise, without permission of the Board of Health.

By this act the Legislature intended to prevent an irruption from the tropics of a number of persons, some of them no

doubt charlatans, who proposed to inoculate the people with yellow fever or cholera germs. One man proposed to introduce into the city of New Orleans yellow fever microbes sufficient to inoculate ten thousand persons; it was apprehended he might in this way produce a yellow fever epidemic.

MAINE.

The status of children born out of marriage has been very much modified in the State of Maine. Sir William Blackstone's defense of the common-law doctrine no longer satisfies the legislators of Maine, who have lost all respect for the statute of Merton and for the barons and nobles of Henry III who refused to adapt the law of England to that of the Church. The people of Maine, it seems, do not fancy the idea of having a *nullius filius* in their midst; they have gone as far as they well could in providing every child with a father. The statute enacts that an illegitimate child is the heir of his parents who intermarry. Any such child is the heir of his mother; he is also the heir of his father if adopted into his family, or acknowledged in writing before a justice of the peace or notary public, and in either of the foregoing cases such child and its issue shall inherit from its parents respectively, and from their lineal and collateral kindred, and these from such child and its issue, the same as if legitimate. This statute is subject to criticism, inasmuch as it makes no distinction between adulterous bastards and natural children, the issue of parents who at the time of conception might have contracted marriage. The civil law does not tolerate the legitimation or acknowledgment of natural children born of an adulterous connection, nor does it so incorporate into the family a natural child not legitimated by marriage as to impart to it legitimate heritable blood, and thus entitle it to inherit from legitimate collaterals, and entitle legitimate collaterals to inherit from it.

An act has been passed to compel the attendance at school of children between the ages of eight and fifteen years

for at least sixteen weeks in each year; truant officers are appointed to enforce the law, and a boy between ten and fifteen years of age found wandering about the streets in school hours is to be committed to the State Reform School unless his parents or guardian give pledges satisfactory to the truant officer that he will attend school as required by law. A bureau of industrial and labor statistics has been established, and the employment of labor has been regulated. No woman, nor a female minor under eighteen, nor a male under sixteen years of age, can be employed to work in any manufacturing or mechanical establishment for more than ten hours a day. The parties may contract for the forfeiture of a week's wages in case the employer discharges the employee without a week's previous notice of his intention, or in case the employee quits work without similar notice; no child under fifteen years of age can be employed to work in such establishments, except during vacation of the public schools, unless during the year next preceding the employment it has attended for sixteen weeks some public or private school, eight weeks of which to be continuous.

An act has been passed which provides that any court may exclude minors as spectators from the court-room during the trial of any case, civil or criminal, when their presence is not necessary as witnesses or parties.

Another act provides that after twenty years from the death of any person, no probate of his will or administration of his estate shall be originally granted unless it appears there are moneys due to the estate from the United States or the State of Maine. The act does not apply to foreign wills previously probated in another State or county.

Political nominating conventions and primary meetings are protected from disturbance and fraud; the sale of commercial fertilizers has been regulated. Imprisonment for debt has been abolished, except in case of fraud, but the creditor is authorized on petition to a magistrate to examine the debtor and compel him to make disclosure of any prop-

erty he may have which is liable to seizure; the machinery to accomplish this result is well devised.

The death penalty, which was incorporated into the penal law of the State in 1883, has been abolished, but a convict sentenced to imprisonment for life for an offense which was formerly capital, cannot obtain a pardon or commutation of sentence unless, after due inquiry and after hearing evidence, the Supreme Judicial Court shall certify to the Governor that in their opinion upon all the evidence the convict is innocent or was wrongly convicted.

An act has been passed to establish Boards of Health in each city and town, to protect the people from contagious diseases; it is very thorough and is especially aimed at scarlet fever, small-pox, diphtheria, and cholera; also an act to extirpate contagious diseases among cattle.

MASSACHUSETTS.

After next January all civil actions, whether at law or in equity, except replevin, may be brought in the same manner in which suits in equity now are, save that in such proceedings common law pleadings so far as practicable are to apply.

A change of venue in civil actions is permitted in the Supreme Judicial or Superior Court when there appears to the judge danger of an unfair trial from local prejudice or other cause.

Superior Court judges over seventy who have served ten years may retire upon half salary.

When real estate is subject to conditions or restrictions unlimited as to time, such conditions or restrictions (except restrictions in a lease for a term of years certain) are in future to be limited to the term of thirty years from the date of the instrument or the probate of the will creating the same; the act does not apply to grants of the State, nor to gifts or devises for public, charitable, or religious purposes.

Warehousemen may sell property deposited with them to obtain charges for storage when the charges are overdue one year, and the statute notice of sale is given.

A limited partnership which succeeds to the business of a former firm may use its name with the consent of its members. A special partner may withdraw six per cent. interest on his capital out of the profits, without liability to refund the same, if it does not impair the capital of the partnership. In case of renewal of a limited partnership, the amount contributed by the special partner must be stated, and his original capital, if impaired, must be made good. Non-compliance with the provisions of the law regulating limited partnership subjects the members to the liabilities and entitles them to the rights of general partners. The employer is made liable to the employee for any defect in his, the employer's, works, arising from negligence of the employer himself, or of an employee charged with supervision; also for negligence of any superintendent in the employer's employ; and for negligence of any employee in control of any signal, switch, locomotive, engine, or train upon a railroad. The legal representative of the employee may recover in case of death, or in case of instantaneous death, the employee's widow; or if no widow, the next of kin, provided such next of kin were dependent on the employee's wages for support.

Damages are limited to $4,000, or in case of death to $5,000. The employer cannot rid himself of liability for defects in his works by contracting with an independent contractor. No recovery can be had where the employee, knowing of the defect or negligence causing the injury, failed within a reasonable time to inform his employer or superior thereof. A certain set-off is allowed when the employer has contributed to an insurance fund from which the employee has benefited. This act does not apply to domestic servants or farm laborers.

Acts in reference to labor and capital are numerous, and in their general nature are as follows:

An act to procure sanitary provisions in factories and workshops;

An act against the employment in factories of children

under the age of fourteen in the cleaning of machinery in motion, or of any machinery in dangerous proximity thereto;

An act to secure the proper ventilation of factories and workshops;

An act to secure uniform and proper meal-time for children, young persons, and women employed in factories and workshops, and in an enumerated class of factories;

An act respecting the employment of minors and women in manufacturing and mechanical establishments, and regulating the number of hours of employment, and limiting over-time employment in case of stopping of machinery;

An act to regulate fines for imperfect weaving; and an act to secure weekly payments of wages by corporations.

Contracts for convict labor have been prohibited, and competition between such labor and free labor is practically forbidden.

For two hours after the opening of the polls, no person entitled to vote in a National or State election, and asking for absence, is to be employed in any mechanical or mercantile establishment, except such as may conduct its business on Sunday.

A penalty is imposed upon every owner or superintendent of a mechanical or mercantile establishment who directly or indirectly employs therein, except during the vacation of the public schools, a minor under the age of fourteen who cannot read and write the English language, and upon every parent or guardian who permits such employment; also upon every person directly or indirectly employing a minor of fourteen who cannot read and write the English language; provided, such minor, since the age of fourteen, has resided for one year in a city or town in the State wherein public evening schools are maintained, and is not a member of a day or evening school. This last provision may be suspended by the School Committee of the place in which the minor resides if they are satisfied that the labor of the minor is necessary to the support of the minor's family.

Clubs distributing or selling intoxicating liquors are made common nuisances, except in cities and towns where licenses are granted, when the licensing board in its discretion may grant a club license.

The sale of intoxicating liquors in time of riot or great public excitement may be prohibited by the Mayor of a city or Selectmen of a town. Any license under the statutes relating to intoxicating liquors is forfeited by a conviction for violation of any such statutes. Implements and furniture used in the illegal sale of intoxicating liquors may be seized. Any sign of whatever character designed to announce the keeping of intoxicating liquors for sale is to be *prima facie* evidence of such keeping. The maintaining of a United States tax receipt as a dealer in intoxicating liquors, other than malt liquors, is to be *prima facie* evidence of keeping for sale.

Self-registering ballot-boxes are to be used in registering ballots in voting on the question of license in a city or town. The sale of intoxicating liquors by retail druggists and apothecaries is regulated and limited.

The Sunday law has been amended; one is no longer subject to a fine for being present "the evening next preceding the Lord's Day" at a "game, sport, play, or public diversion" given without a license. The number of works ranking as works of "necessity and charity" has been enlarged. Steam, gas, and electricity may be manufactured and distributed for purposes of lighting, heat, or motive power; water distributed for fire or domestic purposes; the telegraph and telephone used; drugs, medicines, and surgical appliances sold; horses, carriages, yachts, and boats let; steam ferry boats on established routes and horse cars run; newspapers printed and sold; milk delivered and butter and cheese made; public bath-houses kept open, and before ten in the morning and between four and half-past six in the evening bread and other food usually dealt in by bakers, made and sold. The Board of Railroad Commissioners may

authorize the running of such steamboat lines and trains as the public necessity or convenience requires. Traveling on the Lord's Day, on errands other than those of necessity and charity, continues no longer subject to a fine of ten dollars for "each such offense." Children under thirteen years of age, unless accompanied by a person over twenty-one years of age, are not to be admitted to any licensed place of amusement.

The insurance laws have been amended and codified in an act of one hundred and twelve sections. A law has been passed for the punishment of habitual criminals which is similar to the statute of Connecticut respecting the punishment of incorrigible criminals; also a law for the punishment of unnatural and lascivious acts. Provision has been made for the suppression of contagious diseases among domestic animals, and for the extirpation of pleuro-pneumonia in co-operation with the United States. Commissioners of wrecks and shipwrecked goods have been created and their duties defined; the examination of railroad bridges by the Railroad Commissioners once in two years has been ordered, and the use of common stoves in passenger cars has been prohibited, as well as the use of any heater or furnace not approved by the Railroad Commissioners; finally, the honorably discharged soldiers and sailors who served in the Army and Navy of the United States during the Civil War, are exempted from the operation of the Civil Service Act.

MICHIGAN.

A law has been passed in Michigan making it unlawful to celebrate a marriage without a license, and providing for the registration of marriages.

Divorce has been rendered more difficult by a law which declares that no divorce shall be granted unless the marriage shall have been solemnized in the State, or unless the complainant shall have resided therein one year preceding the commencement of suit. If the cause for divorce occurred out of the State the complainant must have resided in the

State two years, and no testimony can be taken in a divorce suit until four months after the petition has been filed, except where the cause of divorce is desertion or the testimony is taken to perpetuate it.

It is made the duty of the officer before whom the witnesses are examined to propound to each witness the following question: "Do you know any fact, matter, or circumstance which will in any way tend to weaken complainant's case for divorce?"

The bill of complaint must set forth the names and ages of all children of the marriage under fourteen years of age. A copy of the subpœna must be served upon the prosecuting attorney of the county where the suit is commenced, whose duty it is, when in his judgment the interest of the children or the public good so requires, to introduce evidence and oppose the divorce. The court in granting the decree may provide that the defendant shall not marry again within a specified time, not to exceed two years.

A child under ten years of age is permitted to testify on a promise, instead of an oath, to tell the truth if the judge is satisfied that the child has sufficient intelligence and sense of obligation to tell the truth.

The Supreme Court is authorized at any time and in any suit to call before it the parties or any witness to testify orally in open court.

No appeal is allowed from any order of the Probate Court removing an executor, administrator, guardian, or trustee for failure to give a new bond, or to render an account in pursuance of law.

If any minor has property sufficient for his maintenance and education in a manner more expensive than his father can reasonably afford, the Probate Court may order the expenses of education and maintenance to be paid out of the income or the principal of the minor's property.

Any person claiming title to land, whether in possession or not, may institute suit against another person not in posses-

sion also claiming title and have the controversy settled. The "actual damages" which may be recovered against a newspaper publisher, who has published a libel in good faith, and on notice has retracted it, are damages which the plaintiff has suffered "in respect to his property, business, trade, profession, or occupation, and none other."

Lands devised to a person for life with power of appointment by will, or lands devised in trust without power of sale, may be sold by decree of court; and the proceeds thereof invested under the order of the court, are treated as real property and are subject to the dispositions of the will as if no sale had been made.

In case of the insolvency of any person or corporation all debts for labor have precedence over all debts which had not become a lien on the property of the debtor prior to the performance of the labor.

The employment of males under fourteen years of age and of females under sixteen years of age for more than nine hours a day is prohibited.

To protect children from being educated in immorality, the courts are authorized, after due inquiry, to remove them from the custody of the persons having them in charge and place them in some State institution or in the custody of some suitable person. The act applies only to children under fourteen years of age who are bound out, apprenticed, or given away by their parents or either of them.

Any girl between the age of ten and seventeen years, and any boy between ten and sixteen years of age, who runs away from school, or from the office, shop, farm, or other place where he or she is employed, and is found lounging about saloons, bar-rooms, or in the public streets, or attending, without permission, any public dance, skating-rink, or show, may be arrested as a truant upon complaint made by the parents, or by a town or city officer, and sentenced to confinement in the reform school, the boy until he is seventeen years old and the girl until she attains the age of twenty-one years.

The well-known oleomargarine law has been passed, also a law to prohibit the sale of unwholesome milk and of adulterated liquor.

All establishments where emery wheels or belts are used are required to be provided with blowers, so arranged as to carry away the dust from the emery wheels while in operation.

Prohibition of the sale of intoxicating liquors depends on local option.

A very severe act has been passed to protect from fraud primary elections and political conventions.

No railroad company, whose road has been constructed in whole or in part by public aid or local subscription, is allowed to abandon any portion of its road, except upon the order of the Circuit Court of the county wherein lies the portion of the track proposed to be abandoned.

After the 1st of November, 1888, passenger-cars can be heated by no method or device which is not approved by the Railroad Commissioner.

Corporations may be organized in Michigan to carry on every imaginable business, mercantile, mechanical, or agricultural, including the buying and selling of brood animals and the growing of mint.

The sparrow is proscribed—a reward of one cent is offered for every scalp. New York, with less mercy, makes it a duty to starve the sparrow, because it punishes him who gives the poor bird food or shelter. Before long this pitiless legislation will render it impossible to answer the query, so familiar to our youth, "Who killed Cock Robin?"

MINNESOTA.

Following in the footsteps of other States, Minnesota has enacted that woman shall retain the same legal existence and legal personality after marriage as before marriage, and shall receive the same protection of all her rights as a woman which her husband does as a man, and for any injury to her

reputation, person, or property or character, or any natural rights, she shall have the same right to appeal in her own name to the courts of law or equity for redress and protection that her husband had to appeal in his name alone; provided, the wife shall not have the right to vote or hold office, but women may be appointed notaries public.

The garnishment of the wages of a laborer is prohibited, and a first lien is given to the laborer, and a second lien to the furnisher of material, on all property to which either has contributed, and it is made a penal offense for a contractor or sub-contractor to receive the full amount due on his contract without paying the laborer and the material man. Receivers of corporations are required after payment of taxes to pay all laborers and all sums owing to clerks and servants of the corporation for personal services rendered for the three months preceding their appointment.

Actions for libel are regulated by a provision that the aggrieved party shall, at least three days before commencing suit, serve notice on the publisher, specifying the alleged defamatory matter, and demanding a retraction; and if retraction be made, actual damages only can be recovered. The mortgage of crops before the seed thereof shall have been planted for more than one year in advance is prohibited; suits for the foreclosure of mortgages must be commenced within fifteen years after the cause of action accrues. The validity of a will admitted to probate cannot be attacked after the lapse of ten years; minors and other persons under disability at the time the will was probated are allowed ten years from the removal of the disability to question it.

The stipulation in a contract that a debt shall have a greater rate of interest after maturity than before works a forfeiture of the entire interest.

Contractors of prison labor are prohibited from making contracts in advance for the manufacture of articles in competition with artisan labor.

Railroad corporations are made liable for all damages sus-

tained in the State by their employees from the negligence of co-employees, unless there be contributory negligence on the part of the injured employees, and such corporations are not allowed by contract, rule, or regulation to diminish or impair their liability. An act has been passed to regulate common carriers which creates a railroad and warehouse commission, and defines the duties of such commission; also an act to regulate elections, which is substantially a re-enactment of the law of New York on that subject; also an act to establish a bureau of labor statistics, whose duty it is to see that all laws regulating the employment of women, children, and minors, and for the protection of operatives, are enforced. Licenses to sell intoxicating liquors are fixed at a high rate, and instruction in the public schools as to the effect of stimulants and narcotics on the human system is commanded.

The Sunday law has been so relaxed that you can now do in Minnesota during Sunday "whatever is needful for the health, good order, or comfort of the community," but the shaving of beards and hair cutting are not considered necessary to comfort, inasmuch as the statute expressly excludes the practice of the tonsorial art on the Lord's Day.

MISSOURI.

It has been enacted in Missouri that any provision in a contract or agreement which limits the time in which suit may be instituted shall be null and void; that the surviving parent only can appoint a testamentary guardian to a minor child; that only one new trial shall be granted except where the triers of fact shall have erred in matter of law, or when the jury shall have been guilty of misbehavior, and that every order allowing a new trial shall specify of record the grounds on which it was rendered; that in civil actions, where one of the original parties to the contract or cause of action is dead or insane, the other party shall not be admitted to testify either in his own favor or in favor of any party to the action claiming under him; that every railroad company

shall be responsible in damages to the person whose property may be injured or destroyed by fire, communicated directly or indirectly by locomotive engines in use on the railroad operated by such company, and that the railroad company shall have an insurable interest in the property upon the line of its road, and may procure insurance thereon for its own protection against such damages.

The public execution of criminals sentenced to death has been abolished. If a minor under eighteen years of age is sentenced to death, the Governor is authorized to commute the sentence to imprisonment in the penitentiary for a term not less than ten years.

Bucket-shops are forbidden, and dealing in futures without any intention of receiving and paying for the property bought, or of delivering the property sold, is declared to be gambling, and is punished by a fine of not less than one nor more than five hundred dollars for each offense.

The granting of a free pass by any railroad or transportation company, or by any officer, agent, or employee thereof, to any member of the General Assembly, or to any State, county, or municipal officer, is made a penal offense; the giver as well as the receiver is liable to prosecution. The consolidation of competing or parallel lines of railroad is prohibited. The use of any substitute for hops or the pure extract of hops in the manufacture of beer is unlawful. The social agitation concerning the traffic of spirituous liquors has been settled by the passage of a local option law. All owners of mines and of manufacturing establishments are required to report annually to the Bureau of Statistics, among other things, the cost of building and grounds, the cost of machinery and repairs, the amount paid yearly for rent, taxes, and insurance, the value of raw material used, the total amount of wages paid, the number of employees, male and female, distinguishing between the skilled and the unskilled, and the lowest wages paid to each class, giving the age of females under fourteen years; failure or neglect to furnish this report is punishable by fine.

This State has also passed an excellent statute for the regulation and inspection of mines; careful provision is made for the safety and comfort of miners.

NEBRASKA.

I have already mentioned that Nebraska had passed a law to prohibit non-resident aliens from acquiring real estate; this State has also enacted that when a divorce is decreed upon any ground, or when the husband is sentenced to the penitentiary, the real estate of the wife shall come to her immediate possession, the same as if the husband were dead; and when a divorce is granted upon the ground of adultery by the wife, the husband may hold such of her personal property as the court may deem just under the circumstances. The exemption law has been amended so that none of the property of a debtor is exempt from seizure when the claim is for wages due to clerks, laborers, or mechanics, or for money collected by an attorney-at-law for his client. A debt contracted for the necessaries of life is deemed to be due by both husband and wife, and all their property is liable to seizure, except five hundred dollars worth of personal effects.

A very stringent law has been passed to prevent the sale of obscene books and pictures, or magazines made up of criminal news, police reports, or accounts of immoral deeds, lust, or crime, or so exhibiting such books or papers that they may be seen by a minor child.

The law of criminal libel has been amended so as to make the publication of a libel in a paper of general circulation a crime punishable by imprisonment in the penitentiary for not less than one year nor more than three years.

The use of vile and insulting language intended to provoke an assault upon the person using it, or upon another, is made a misdemeanor, punishable by fine or imprisonment. Gambling is a felony, punishable by imprisonment in the penitentiary.

NEVADA.

Mining for gold, silver, copper, lead, cinnabar, and other valuable minerals is declared by Nevada to be a paramount interest of the State and to be a public use, for which improvements on lands may be expropriated.

The sinking of artesian wells is encouraged by payment of a bounty of $1.25 per foot for any well which yields seven thousand gallons of water per day, flowing continuously for thirty days. The bounty is not to be paid to more than three wells in each county, and they must not be located within ten miles of each other. An act has been passed to prevent the importation or sale of any domestic animal affected with contagious or infectious disease; also an act to prohibit the sale of tobacco in any form to any minor under eighteen years of age without the written consent of parents or guardian.

A comprehensive conspiracy act has been enacted. It embraces a conspiracy to commit any offense, or to maliciously procure an indictment or an arrest for a criminal offense, or to falsely maintain a civil suit, or to cheat or defraud any person of property by means which, if executed, would amount to a cheat, or to obtaining money or property by false pretenses, or to cheat or defraud any person of property by means in themselves criminal, or to commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or the due administration of law, and to procure conviction it is not necessary to prove any overt act done in pursuance of the conspiracy; but it does not prohibit the orderly and peaceable assemblage or co-operation of persons employed in any trade, profession, or handicraft for the purpose of securing an advance in the rate of wages or for the maintenance of such rate.

The manufacture or the possession of dynamite or other device for the destruction of life or property, with the intent

to use or to attempt to use the same for such purposes, is declared a felony, punishable in the penitentiary for not less than ten nor more than twenty-five years, and in case life is taken by the use thereof, the penalty is death.

In the year 1885 the Legislature of Nevada passed an act to promote habits of temperance and to prohibit the practice of treating. This law cast such a shadow over the State and was so repugnant to the good nature of the people, that the first thing which the Legislature did, after providing for the mileage and per diem of its members, was to repeal the preventive treating law and to substitute in its place a punitive act making it a misdemeanor for a civil officer to become so intoxicated as to render him unfit to discharge the duties of his office. The penalty is a fine not exceeding $1,000 or imprisonment not exceeding one year and removal from office. It appears to me that much difficulty will be encountered in the execution of this law.

NEW JERSEY.

But few laws of general interest have been enacted by the Legislature of New Jersey. Habitual drunkards, like idiots and lunatics, may be put under the guardianship of a commission. Women are allowed to vote in school meetings; the tax-gatherer may intrude into the sacred precincts of the Court of Chancery and assist in the depletion of litigated estates by the collection of taxes from moneys or property in the custody of the court; representatives of successions, who, at sales to foreclose mortgages, forming part of the assets of the estate, purchase for the succession the mortgaged property, hold the title as joint tenants, and are authorized to sell and convey the same without any order of court, the proceeds of sale to be accounted for as other moneys which come into their hands; guardians are allowed, with the approval of the Chancellor, to mortgage the lands of minors, lunatics, and insane persons when it is not for the interest of their wards to sell the same.

New Jersey has authorized the formation of companies for mutual protection against damage to glass by hail. It has established a State Board of Agriculture, and expended money to increase the production of fish in its waters; it has fixed twelve consecutive hours, with reasonable time for meals, as a day's labor for employees of street railways and elevated railroads; it has prohibited the transportation of dynamite or other explosives in any boat on the lakes or ponds of the State in a greater quantity than fifty pounds. A law has been passed which makes it unlawful for the Governor to commission as a State detective or policeman any person who has been convicted of and served a term of imprisonment for having committed the crime of forgery, or perjury, or burglary, or arson, or highway robbery, or counterfeiting money, but to prevent trespassers and malicious mischief in the rural districts, the Township Committee may appoint any one a policeman who will perform the duties of the office for nothing.

NEW YORK.

No marriage can be registered in New York unless solemnized by a minister of the gospel, a judge or justice of the peace, or a mayor, recorder, or alderman of a city, but all lawful marriages contracted in the manner heretofore in use are valid. The Quakers are excepted from the act, nor is the manner of solemnization prescribed in the act necessary to the validity of the marriage.

A husband or wife is not competent to testify against the other in the trial of an action founded upon an allegation of adultery, except to prove the marriage or disprove adultery; nor can either without the consent of the other be compelled to disclose confidential communications made during the marriage by one to the other; in an action for criminal conversation the plaintiff's wife is not a competent witness for the plaintiff, but she is for the defendant, except she cannot, without the consent of the plaintiff, disclose confidential conversa-

to the disposition of the can when emptied—if the possessor on notice empties it, can he retain the can? If the owner takes possession of the can to empty it, must he return it to the unlawful possessor, or may he march off with it? I notice this act became a law without the approval of the Governor; perhaps this feudal method of righting wrongs by main force was distasteful to the Executive, who in the interest of peace would wish to avert a battle of the cans.

The sale of goods made by convict labor in the prisons of other States is not allowed unless such goods are marked or branded with the words "convict made;" on the other hand, New Jersey requires all goods manufactured in the State prison and intended for sale to be stamped with the words, "Manufactured in the New Jersey State Prison."

It is made unlawful for any employer of messenger boys to put in a disorderly house, or in a place where liquor is sold without license, any instrument or device by which communication may be had with any officer or place of business of the employer, and such employer is forbidden to send a messenger boy on an errand to a disorderly house, or to a place where liquor is sold without license. California has legislated on the same subject, and has made it unlawful to send minors on errands or with messages to houses of questionable repute or variety theatres. An act has been passed to protect primary elections and conventions of political parties. So many States have legislated on this subject that we may now regard primaries and conventions as recognized institutions of the country. New York has also regulated the manufacture and sale of wines and half-wines; pure wine must contain at least seventy-five per cent. of pure grape or other undried fruit-juice, and half-wine must contain more than fifty per cent. of such juice; all half-wines must be stamped and sold as such; all wine is considered adulterated, and the sale thereof is prohibited, which contains any alum, baryta salts, caustic lime, carbonate of soda, carbonate of potash, carbonic acid, salts of lead, glycerine, or any other antiseptic. Stoves and furnaces

inside railroad cars for heating purposes are outlawed, and railroad companies are required to place guard-posts in the prolongation of the line of bridge trusses, so that in case of derailment the posts, and not the bridge trusses, shall receive the blow of the derailed locomotive or car. Druggists are forbidden to refill more than once prescriptions containing more than one-fourth of a grain of opium or half a grain of morphine, except on the verbal or written order of a physician. It is unlawful for any person or corporation to exact of an employee an agreement not to join a labor organization as a condition of securing employment or of being continued in employment.

NORTH CAROLINA.

It has been enacted in North Carolina that in all actions to recover damages by reason of the negligence of the defendant, he cannot rely on the defense of contributory negligence unless it is set up in the answer.

This State has also established a Bureau of Labor Statistics. Laborers and material men are secured by a lien on the building or vessel, to the construction or repair of which their labor or material contributed, and it is made the duty of a contractor to furnish to the owner an itemized account of the sums due for wages and material, which the owner must retain from the contract price and pay directly to the laborer or material man; the failure to furnish such itemized account before receiving any part of the contract price is a misdemeanor, punishable by fine and imprisonment at the discretion of the court. A similar statute protects laborers employed by stevedores to load or unload ships or other vessels. A divorce is allowed to the wife if the husband shall be indicted for a felony, and shall flee the State and does not return within one year. It is made unlawful for any railroad to collect for the transportation of freight of the same class a greater amount as toll or compensation for a short distance than for a longer distance in the same direction over its road,

but the railroad company may make special contracts with shippers of large quantities to be of not less in quantity than one carload. The sale of dangerous explosives has been regulated. It is made unlawful to publish any account of a lottery, whether within or without the State, indicating when and where the same is to be or has been drawn, or the price of a ticket, or where it can be obtained. There is a statute to simplify indictments for murder and manslaughter, which abolishes "the fear of God" and "the instigation of the devil." This elimination from indictments of the lecture to the bewildered prisoner will no doubt be regretted by the pious old-fashioned clerk, who delighted in reading it *ore rotundo* as much as some modern Plowdens bemoan the loss of John Doe and Richard Roe, of *absque hoc* and *de injuria.*

But the most curious statute passed by the North Carolina Legislature is that which exacts from every company of gypsies, who make a support by pretending to tell fortunes, the payment of $150 to each county in which they offer to practice their craft, and then, with extraordinary *sang froid,* proceeds to declare that payment of the license shall not exempt the gypsies from indictment for practicing their art.

OHIO.

The law respecting husband and wife has undergone considerable change in Ohio; this State has given dower to the husband. Tenancy by the courtesy has been abolished, but the widower as well as the widow is endowed of an estate for life in one-third of all the real property of which the deceased consort was seized as an estate of inheritance at any time during the marriage, or of which such consort at the time of death held the fee simple title in reversion or remainder, or by virtue of an agreement or other evidence of title; but a conveyance of real estate in lieu of dower to take effect on the death of the grantor, will, if accepted by the grantee, bar the right of dower; but if the conveyance be made during

marriage, or when the grantee was a minor, the grantee has the right of election. A husband or wife who leaves the other and dwells in adultery is barred of the right of dower unless the offense is condoned. Husband or wife may enter into any contract with the other, or with third persons, which either might make if unmarried; but husband and wife cannot contract to alter their legal relations, but they may agree to an immediate separation, and for the support of either of them and their children during the separation. Contracts between husband and wife are subject to the general rules which control the actions of persons occupying confidential relations with each other.

A married person can take, hold, and dispose of property, real or personal, the same as if unmarried, and neither husband nor wife as such is answerable for the acts of the other. Thus State after State has swept away the last vestige of marital law so dear to our feudal ancestors, and drawing inspiration from a source so distasteful to the ancient sages of the common law of England, the modern legislator has advanced beyond the civilian, who forbids husband and wife to contract with each other, and does not permit the wife to alienate her real estate or accept gifts without the consent of her husband, or to bind herself as his surety, though she may, with his consent, become the surety of another. This State has repealed what are termed in Ohio "the black laws," that is to say, the law authorizing separate public schools for colored children and the law which prohibited the intermarriage of white persons with persons of African descent.

A tenant for life of real estate who commits waste forfeits that part of the property of which waste is committed to the immediate reversioner or remainder-man; he is, besides, liable in damages. Corporations may be organized for the apprehension and conviction of horse thieves and other felons; the members of the corporation upon the proper certificate of the presiding officers may pursue and arrest without warrant

any person they may believe guilty of felony, and detain him until a legal warrant can be obtained.

When the agreement of reorganization of a railroad company provides that any class of creditors or bondholders, or stockholders of the original company, shall be in any manner restricted in participation in profits or dividends, or in respect to liens, or the right to vote in the reorganized company, such company is required to express upon the face of each certificate or security issued by it the restrictions contained in the agreement of reorganization, and only such restrictions as are thus expressed are binding on the owner of the certificate or security. The owner of one-tenth of the stock of a private corporation may, by application to a court fifteen days before any meeting of stockholders, obtain the appointment of three disinterested persons as inspectors of the votes at such meeting. Whenever a citizen shall file an affidavit with the Probate Judge charging that a girl above the age of nine years and under fifteen has committed an offense punishable by fine or imprisonment, other than imprisonment for life, or that she is leading a vicious or criminal life, the girl may be brought before him, and after due notice to the parent or guardian and hearing of witnesses she may be committed to the Girls' Industrial Home. The seduction or procuring of girls under eighteen years of age for immoral purposes is made a felony punishable in the penitentiary for not more than three years nor less than one year. The employment of minors in factories and workshops for more than ten hours a day is prohibited; employers engaged in manufacturing, mining, or mechanical business are required to pay their employees in cash every two weeks; the sale of diseased animals is punished, and to prevent the dissemination of communicable diseases provision is made for the quarantine of the animals affected. The selling of adulterated vinegar and dairy products as genuine is punished, and it is made the duty of the Food Commissioner to inspect the articles offered for sale and to prosecute persons selling them in violation of

law. Cities and towns have been authorized to regulate the price of natural and artificial gas. A carefully prepared act regulates the construction and plumbing of buildings in any city of the first class of the first grade; its provisions seem to be admirably adapted to secure safety, health, and comfort. A very comprehensive statute has been passed which provides for the expropriation of property for any imaginable public use. To prevent fraud in political affairs it has been enacted that no delegate to any political convention shall have power by proxy or otherwise to designate another person as delegate to serve in his place.

An act has been passed providing for the manual and domestic training of children in public and private schools in cities of the second grade, and an additional tax of one-fifth of one mill is levied for that purpose.

A pension fund has been established for disabled firemen, for the wives and minor children of such firemen as are killed or die of disease contracted while in the performance of duty.

The election laws have been perfected, and the system of registration which applied to Cincinnati and Cleveland has been extended to other cities.

An act was passed to erect a statue or other suitable monument in Hamilton County in commemoration of the public services of General William Henry Harrison. The act authorized the levy of a tax to pay the expense of the memorial on condition that, at an election to be held in Hamilton County for that purpose, a majority of the votes cast should be in favor of the tax. That election has been held and the tax voted; it is the first instance in the history of this country where the people at the polls have had an opportunity to disprove the apothegm that "republics are ungrateful."

OREGON.

The State of Oregon has passed an act to regulate the insurance business; also an act to prevent deception in the

sale of dairy products; an act for the maintenance of kindergartens as part of the public school system, and also an act creating a railroad commission. No railroad can be leased to a foreign corporation except on condition that such foreign corporation shall agree that all suits by and between it and a citizen of the State during the continuance of the lease shall be prosecuted or defended to a final termination in the State courts, unless the citizen chooses to remove such suits to the Federal court; failure to comply with the agreement renders the lease void at the option of the Legislature. No one but a citizen of the State is eligible to the office of director of a corporation, except that corporations organized for the construction of railroads, wagon roads, canals, or flumes, or for the conduct of mining enterprises, newspapers, or institutions of learning, may permit a minority of the board of directors to reside outside of the State. The divorce law has been modified so as to allow the defendant in a suit for divorce on the charge of adultery to admit the fact, and show in bar of the suit that the act was committed by the connivance of the plaintiff, or that it has been expressly forgiven or impliedly condoned by cohabitation after knowledge thereof, or that the plaintiff has also been guilty of adultery without the connivance of the defendant, and that the offense has not been condoned.

On Sundays and holidays courts may give instructions to a jury then deliberating on their verdict, and may exercise the powers of a magistrate in criminal proceedings.

Opium, morphine, eng-she or cooked opium, hydrate of chloral or cocoaine cannot be sold except by a licensed druggist on the prescription of a physician for cure of disease. The sale of intoxicating liquors to a minor is prohibited, and it is made a special offense to suffer any minor to loiter in any saloon or bar-room where intoxicating liquors are sold, or to engage in any game of cards, dice, or billiards in such saloon or bar-room. A constitutional amendment is proposed prohibiting the sale of intoxicating liquors, and its fate will

be decided by the people at the election to be held next November.

PENNSYLVANIA.

Reformation of the law in Pennsylvania encounters clamorous opposition, hence that State limps along the road of legal progress *claudo pede;* instead of breaking down at once the artificial barrier between law and equity, and allowing the plaintiff to enforce whatever right he may disclose in a simple statement of the facts of his case, a half way measure has been adopted. The distinctions between actions *ex contractu* and those between actions *ex delicto* have been abolished, so far as procedure is concerned, so that all demands heretofore recoverable in debt, *assumpsit*, and covenant may be sued for in one form of action called *assumpsit*, and all damages heretofore recoverable in trespass, trover, or trespass on the case may be sued for in one form of action called trespass. Why maintain the distinction between *assumpsit* and trespass as to the form of action? Why have any form of action, if special pleading be abolished, and notice of special matter of defense be substituted in its place, as the Pennsylvanians have done?

Forms are the vestiges of archaic fictions, and as legal systems become highly developed, fictions disappear, methods of procedure are simplified, and their importance is lost in the contemplation of rights.

The decisions of the Pennsylvania courts have rendered it necessary for that State to pass an act declaring that in sales by sample there shall be an implied warranty that the goods sold are the same in quality as the sample. It had been held that the exhibition of a sample merely amounted to a representation that the goods sold were merchantable, and that they corresponded with the sample in kind, but not in quality.

An act has been passed which provides that steam boiler insurance companies shall be liable for all immediate loss or

damage, which the owner of the boiler or his employees may suffer, or be liable for, in case of the explosion of the boiler mentioned in the policy, for the amount specified therein.

A married woman's property act has been passed similar in its provisions to the enactments of other States on the same subject.

She is practically a *feme sole*, but she cannot alienate or mortgage her real estate, unless her husband joins in the deed; nor can she become an accommodation indorser or surety for another; the law is silent as to the power of contracting with each other; it, however, provides that a will executed by her when sole shall not be revoked by subsequent marriage. Another act allows a deserted wife, or one whose husband neglects to provide for her and her children, to appoint a testamentary guardian for them.

If a tenant for life or years fails to apply the rents and income of real estate to the payment of charges or of incumbrances for which he is liable, the court is authorized on the application of the remainder-man or reversioner, to appoint a sequestrator of the revenues, unless the tenant shall enter into security in such sum and on such conditions as the court may direct.

When there is a prayer for a moneyed decree in a bill in equity the court is authorized to issue a writ of foreign attachment against the property of a non-resident defendant.

The trustees of any church or congregation are empowered to abandon a cemetery and sell the same by means of judicial proceedings after due notice, and after purchase of the rights of all lot-holders, and with the consent of such near relatives of the persons buried as may appear. A similar statute was passed by the Legislature of New York.

In case of the death of an adopted child intestate, the adopted parents and their lawful heirs and kindred are entitled to inherit from the deceased, as if the adopted were a natural child, to the exclusion of the natural parents and

kindred, and the adopted child is entitled to inherit as if it were the child and heir of the adopted parents.

This State has authorized a chattel mortgage upon iron ore, pig iron, blooms, steel and iron rails, steel ingots, rolled and hammered steel, and all steel and iron castings not in place; such mortgage must be recorded in the county where the chattels are at the time of execution, and it ceases to be valid three months after maturity, unless within that time the mortgagee shall file a statement specifying the amount due on the mortgage; then it continues to be valid for such amount for a further period of one year from maturity.

In case of failure to pay the debt, the mortgagee may in person or by his agent take possession of and sell the property after thirty days' advertisement. It is made a misdemeanor for the owner of the property to sell it without disclosing the existence of the mortgages upon it, and the penalty is not less than one hundred dollars, nor more than the entire amount of the purchase-money, and imprisonment not more than one year, either or both, at the discretion of the court.

The act which authorized borrowers to contract for the payment of taxes upon loans made to them has been repealed. The detective business has been prohibited except under a license obtained from the Court of Quarter Sessions on giving bond in the sum of $2,000. An act has been passed to enforce against railroad companies that article of the Constitution which prohibits the creation of fictitious stock by corporations.

The act, after reciting that railroad corporations had evaded the Constitution by the formation of syndicates and other devices, proceeds to enact that no stock shall be issued in payment of labor or property until after the President of the company shall have filed in the office of the Secretary of State a statement sworn to by him and the chief engineer, which shall set forth in detail the prices paid or to be paid

for labor done or property received, and that the prices mentioned were not in excess of the cash value of the labor or property. It prohibits the issue of stock for a larger amount than such cash value.

It further provides, that the company shall not issue its bonds or other certificates of indebtedness for less than their fair market value, nor until after the full amount of its authorized capital subscribed for has been paid in money or labor or property, nor for an amount in excess of its capital stock, shown by its statement to have been paid for. The employment of children under twelve years of age in any mill, manufactory, or mine is forbidden, and the semi-monthly payment in cash of wage workers is required.

If an employer requires from his employee a notice of intention to quit work under pain of forfeiture of wages, a similar notice must be given by the employer of his intention to discharge the employee, except in case of general suspension of work ordered by the employer or the employees.

Employers are required to provide seats for the use of female employees in manufacturing, mechanical, and mercantile establishments.

Twelve hours constitute a day's work for employees of horse, cable, or electric railway companies.

The civil rights of colored people are protected by a law which prohibits their exclusion from railroads, hotels, theatres, or other places of entertainment or amusement on account of race or color. An effort has been made to preserve the purity of elections by punishing the election officers who become intoxicated while on duty.

A very rigid license law regulates the dealing in intoxicating liquors. The clause which will occasion most regret is that which annihilates the tavern score by prohibiting the sale of drinks on credit.

Pennsylvania, for the encouragement of forest culture, gives a bounty in the shape of a reduction of taxes on land planted with trees. The amount of the reduction depends on

the number of years, not exceeding thirty, that the land is devoted to the culture of timber.

RHODE ISLAND.

An adjourned session of the Legislature of Rhode Island commenced on January 18th and terminated on the 6th of May. It met again according to law on 31st of May. My examination of the laws of this State has been confined to those passed during the adjourned session.

A constitutional amendment providing that women should have the right to vote subject to the same qualifications as men was submitted to the people in April last; it was defeated by a majority which surprised those who favored as well as those who opposed it.

The liquor law has been amended so as to increase its rigor, and clubs organized for the purpose of distributing or selling intoxicating liquors have been declared common nuisances. An act was passed to co-operate with the United States in the extirpation of pleuro-pneumonia, and to provide for the quarantine of diseased animals.

Another act authorizes orphan asylums to whose care children have been committed to bind them out as apprentices during minority, or provide them with homes in a respectable family as servants, requiring proper provision for their comfort and instruction; these asylums are also authorized to consent to the adoption or marriage of children confided to their care. Another act provides for the compulsory education of children between the ages of seven and fifteen, and for the appointment of truant officers to enforce the law; it prohibits the employment of children under ten years of age while the public schools are in session, or the employment of children between ten and fifteen years of age except during the vacation of the public schools, unless during the twelve months next preceding they shall have attended school, or shall have already acquired the elementary branches of learning taught in the public schools. This State has also established a bureau of labor statistics.

SOUTH CAROLINA.

In South Carolina the remedy of arrest and bail has been extended to actions not arising out of contract when the defendant is a non-resident of the State, or is about to remove therefrom, or when the action is for injury to person or character, or for wrongfully taking, detaining, or converting property. A constable is not allowed to swear out a warrant in any criminal case except when he has been personally affected by the offense with which the party is charged.

To remedy the evil of special legislation for the creation of corporations, a comprehensive law has been passed, which authorizes two or more persons to form a corporation for the purpose of carrying on any manufacturing, mining, industrial, labor, immigration, or other business, except that of operating or constructing a railroad. Among the powers conferred on business corporations created under the act "is the power to make contracts, acquire and transfer property, both real and personal, possessing the same powers in such respects as individuals now enjoy."

Each stockholder is jointly and severally liable to creditor in an amount besides the value of his shares not exceeding five per cent. of the par value of the shares held by him at the time the demand was created, provided such demand be payable within one year, and proceedings to hold the stockholders liable therefor be commenced within two years after the maturity of the debt.

The allowance of "any unnecessary fat" in the publications of the State printer is forbidden. Railroads can run on Sunday the regular mail trains, fruit and vegetable trains, and such construction and other trains rendered necessary by extraordinary emergencies, other than those incident to freight and passenger traffic, and such freight trains in transit, as can reach their destination by six o'clock in the morning.

The Board of Agriculture is directed to establish two ex-

perimental farms and stations for the purpose of making agricultural experiments and tests.

To obtain admission to the bar the applicant must pass a written examination, unless he be a graduate of the law school of the State University.

This State furnishes an example of queer legislation: a tax of three mills for county purposes is levied on the property in each county, then follows in the same act a long list of exempted counties, in which a different and higher rate of taxation is fixed. The exceptions embrace all the counties in the State, so that, in fact, the clause which levies three mills only is applicable to no county.

TENNESSEE.

Tennessee has passed several acts in regard to corporations which deserve notice. One prohibits the consolidation of parallel or competing lines of railroad; another permits any railroad of any other State to extend its line into the State of Tennessee a distance of not exceeding five miles for the purpose of reaching a terminal point or a general depot, and to expropriate property to accomplish the object; another act empowers a corporation not only to lease and dispose of its property and franchises, or any part thereof, to any corporation, foreign or domestic, engaged in the same general business, as is authorized by the charter of the lessee corporation, but also to make any contract for the use or enjoyment of its property and franchises by any other corporation, on such terms as may be agreed upon by the parties, and the lessee or usee corporation is authorized to carry out such lease or contract, but the lease or contract must be approved by the vote of a majority in amount of the stockholders of the lessor corporation, and if the lessee be a domestic corporation, a similar approval on its part is required; but this power cannot be exercised by railway corporations so as to acquire control by lease or otherwise of any competing line of railroad. Another act provides that corporations may be organ-

ized under the general laws of the State for the purpose of carrying on the trade of merchants, and that corporations whose existence with a view to liquidation is continued under the general law for five years after the expiration of their charters, may, during that period, continue the corporate business. Another act declares that the non-user by any corporation of a part of its powers, privileges, or franchises shall not have the effect to forfeit, or to affect any franchise, right, power, privilege, or immunity contained in the charter.

The taxing districts of Tennessee are authorized to regulate the price of gas, provided it shall not be reduced below $1.50 per one thousand feet. The law regulating the liens of mechanics and material men contains a provision that if work be done or materials be furnished for the construction or repair of buildings or improvements on the lands of any married woman who has not signed the contract therefor pursuant to law, the workman or material man being ignorant of her right or claim, and the married woman shall refuse to recognize his lien, he may take and remove the property, or the parts of the same on which his labor was performed or his materials were used. This right of removal is applied to all other cases of parties under disability, whether as minors, persons of unsound mind, or *cestuis que trustent*, or in other cases of superior titles or liens, when the creditor acted in ignorance of the rights of such parties. It is also extended to repairs or improvements ordered by tenants or occupiers when the owner of the premises refuses to pay therefor, provided that the courts shall have jurisdiction to enforce such liens on the property of persons in the cases above mentioned, care being taken to protect the rights of both the owner and the creditor.

The proviso is the real sting in the tail of this law, and may render the right of removal of some value; perhaps the legislator intended by this proviso to invest the courts with jurisdiction to enforce the equitable doctrine that no man shall enrich himself at the expense of another.

To owners and other persons controlling lands, a lien is given on the crops raised by share croppers for supplies, implements, and work stock furnished to such croppers to enable them to make a crop. A tenant in common or joint tenant having an interest in personal property, who disposes of the same without the knowledge or consent of his cotenant, and converts the proceeds to his own use, is guilty of a misdemeanor punishable by fine and imprisonment. Miners are protected by an act to provide for the weighing of coal at the mines under the supervision of a weigher selected by a majority of the miners. Provision is also made for the appointment of mine inspectors, whose duty it is to enforce the laws regulating the ventilation and working of mines. Two acts have been passed to prevent the improper influence of employers on employees; one is aimed at employers, who, by withholding wages, attempt to coerce employees to buy merchandise at stores kept by the employers; the other punishes any corporation or its officers for discharging, or threatening to discharge, an employee for voting, or not voting, at any election, State, county, or municipal, or for not dealing with a particular merchant. The penalty is a fine of not less than $100, nor more than $1,000.

The sale of intoxicating liquors within four miles of a school-house, public or private, is prohibited. The act does not apply to incorporated towns nor to manufacturers who sell by wholesale.

An amendment to the Constitution prohibiting the manufacture and sale of intoxicating liquors in the State will be voted on at an election to be held in September next.

Tennessee has invented a new word used in an act which prohibits "barbering" on Sunday.

The laws of procedure have been changed so as to allow an appeal in cases of *habeas corpus*, and to permit a jury to disperse during the trial of criminal cases where the minimum degree of punishment for the crime charged is not above one year in the penitentiary, and a remedy has been

afforded to persons of unsound mind, who become sane, to get rid of their guardians.

TEXAS.

Any will disposing of land in Texas is treated as valid if it has been duly probated according to the laws of any of the United States or Territories; the registration of an attested copy of said will, and of the probate proceedings, in the office of the Recorder of Deeds of the county where the land lies operates as a deed of conveyance to the devisee, and the validity of the will cannot be contested unless suit be instituted within four years from the date of registration. Corporations may be organized for the purchase and sale of agricultural and farm products, goods, wares, and merchandise, provided the capital stock shall not exceed $20,000 and the number of incorporators be not less than ten; no member of the corporation can hold more than $500 of such stock; any person holding more than that amount is liable for all the debts of the corporation.

A very well conceived law has been enacted regulating the appointment of receivers and the administration of property in their charge. Among other provisions, which are but enactments of the principles now recognized by courts of chancery, are the following:

1. No corporation shall be administered by a receiver for a longer period than three years, and the court shall within that time wind up the affairs of the corporation, unless prevented by an appeal.

2. No receiver of a corporation, partnership, or person shall be appointed on the petition of such corporation, partnership, or person.

3. The receiver may sue and be sued in any court of the State having jurisdiction of the cause *ratione materiæ*, without leave of the court which appointed him, and it is the duty of the court which renders the judgment against a receiver to order its payment out of any money in his hands.

4. All money that comes into the hands of a receiver as such must be applied after payment of costs and expenses of the suit in which he was appointed, to the expenses of operating and managing the property in his charge, including all materials and supplies procured by him therefor, and all liabilities incurred by him in such operation and management, and all judgments recovered against him during his receivership; all claims for wages of employees or work done or material furnished while he is operating the property, and all judgments recovered in suits brought before the appointment of a receiver, shall be a lien on the funds in his hands as receiver.

5. When the receiver of a corporation has under the order of the court made improvements or additions to the property in his charge, and has paid for the same out of current receipts, if there be any unpaid floating debt the corporation shall contribute to the floating indebtedness the value of the improvements; and if there are liens on the property, and it is sold under decree of the court, then it is the duty of the court to retain out of the proceeds of sale a sum of money equal to the value of the improvements for the purpose of paying such floating debt.

All mechanics, laborers, and operators who have performed labor or worked with tools or teams, or otherwise in the construction, operation, or repair of any railroad or locomotive or car, or other equipment of a railroad, and to whom wages are due for such work, are given a lien prior to all others on such railroad or its equipments for the amount due for personal services.

Railroad companies are required to pay the wages of employees within fifteen days after they are due; they are also required to furnish double-decked cars for the shipment of sheep, goats, hogs, or calves, and are prohibited from charging a higher rate of freight for a double-decked carload of those animals than that charged for a single-decked carload of cattle or horses. An act has been passed to regulate the

shipment of freights, and to require railroad companies to furnish sufficient cars to transport the same; also an act prohibiting the consolidation of parallel or competing lines of railroad; also an act to compel railroads to furnish reasonable and equal facilities and accommodation to all corporations and persons engaged in the express business; also an act to authorize shippers of freight to recover from a railroad company special damages at the rate of five per cent. per month upon the value of property shipped for the negligent detention thereof beyond the time reasonably necessary for its transportation. Railroads cannot reduce the wages of their employees without giving thirty days' previous notice. On the other hand, an act has been passed to protect railroad trains from detention by force, threats, or intimidation, and to punish willful injury to road, locomotives, or cars so as to prevent the use thereof; also an act to punish any person who shall willfully place any obstruction upon the track of any railroad, or remove any rail, or displace a switch, or in any way injure such road, or its locomotives or tenders or cars, whereby the life of any person might be endangered; the penalty is not less than two nor more than seven years in the penitentiary, and if the life of any person is lost by the unlawful act the offender is guilty of murder.

No one can be convicted of any grade of homicide unless the body of the deceased, or portions of it, are found and sufficiently identified to establish the death of the person charged to have been killed.

Under this statute neither circumstantial evidence nor the confessions of the accused will suffice to establish the *corpus delicti*. The fraudulent conversion of personal property by any bailee is punished as theft. Bucket shops and dealings in futures are forbidden. Any person convicted of a misdemeanor, and who shall be committed to jail in default of payment of the fine and costs, may be worked upon the public roads, or upon the county farms of the county where the conviction was had, until the fine and costs are paid, the con-

vict to be entitled to a credit of twenty-five cents a day for his work.

The vendor of intoxicating liquors in quantities less than a quart is required to give bond with surety in the sum of $5,000, conditioned that he will keep a quiet house; that he will not sell to a minor, or to a student of any institution of learning, or to a habitual drunkard, or to any person after being notified in writing by the wife or mother, daughter or sister, of the person not to sell to such person; that he will not permit any minor to enter his place of business, nor keep or permit to be kept on his premises any ten-pin alley, pool table, nor any kind of table or device for games of chance, nor rent any part of his premises for any game prohibited by law, and that he will not sell adulterated liquors.

A local option law has been passed to forbid the sale of intoxicating liquors in any community which may vote in favor of prohibition.

An amended election law provides a method of counting the ballots at intervals of an hour while the election is going on; at the end of each hour the box in which the ballots are deposited is opened and the votes counted, another box meanwhile being used to carry on the election; all the counted ballots are deposited as fast as they are counted in a third box, and when the election is over such box containing all the ballots is delivered to the proper officer, according to law.

VERMONT.

In Vermont provision has been made for the appearance of the State's attorney for the several counties in all divorce cases in their respective counties, and whenever in their judgment the public good shall so require they shall introduce evidence on the part of the State; a fee of $5.00, payable out of the treasury, is allowed the State's attorney upon the final disposition of each divorce case in which he appears.

In suits brought against a husband for the maintenance of a wife she is a competent witness; in all actions where the husband and wife are properly joined, either as plaintiffs or defendants, both the husband and wife are competent witnesses, except as to conversations between them. In business transactions conducted by the husband as agent of the wife, or by her as his agent, both are competent witnesses for each other.

A party producing a witness may, by leave of the court, prove that he has at other times made statements inconsistent with his testimony, but before doing so the witness must be asked, under the usual conditions, whether he made such supposed statements. In insolvency proceedings the debtor's homestead may be sold, if necessary, to sever his interest from other interests held jointly with him; or, when a severance of the homestead from other real estate of the debtor will depreciate the value of the other real estate, or be a great inconvenience to the parties interested in either, the proceeds of the homestead to be paid to the debtor or investor under the direction of the court. A chattel mortgage executed by a firm may be signed and sworn to by one member thereof.

A railroad commission has been created with the usual powers of such commissions, and the commissioners are directed as far as possible to conform to the provisions of the Interstate Commerce Act passed by Congress and to the recommendations of the National Board upon the subject of transportation.

When a railroad is to be sold under a decree of court, the company owning any connecting railroad is authorized to purchase the road to be sold, and to consolidate it and its franchises with the purchasing company.

A drunk or disorderly passenger, or one who refuses to comply with the reasonable regulations of a railroad company, may be put off the train by the conductor at the nearest regular station, but not elsewhere. Steam boilers used in any city or town may be examined on the application of three

reputable citizens, and if found defective the use of them is prohibited.

Courts are required to exclude all minors from the court-room when a case of a scandalous or obscene nature is on trial, and they may exclude all spectators except parties and witnesses.

The sale of oleomargarine or other similar substance as butter is prohibited, and hotels, restaurants, and boarding-houses in which imitation butter is used are required to give notice thereof by posting a placard.

For some reason which I cannot ascertain, Vermont has repealed the law which deprives persons guilty of desertion and persons convicted of felony of the right to vote.

The liquor law has been amended and made more stringent; the study of scientific temperance in the public schools is enjoined; instruction as to the effects of alcoholic drinks and narcotics upon the human system must be as thorough as it is in arithmetic or geography; the law declares that at least one-fourth of the space of the text-books must be devoted to this subject, but in the highest grade of the graded schools the legislator thinks twenty pages of alcoholic matter will suffice.

I cannot refrain from calling your attention to a resolution passed by the Legislature of Vermont, because it is a beautiful manifestation of that fraternal sentiment which really exists in this family of States. The cordiality expressed in the resolution gives assurance that the family feud is ended in fact and in spirit; that its reminiscences no longer inflame the passions; that the soothing hand of obliteration has effaced the symbols of strife; that monuments erected on battle-fields are but memorials of the heroism of the dead; that the brave American has lost the rancor engendered by war in admiration for the valor and genius of his countrymen, and in respect for the memory of those who, on both sides, sacrificed their lives for the maintenance of their principles. Monuments of Vermont marble had been constructed

in Virginia by Colonel Herbert E. Hill, of the Eighth Vermont Regiment, as a memorial of those of his regiment who fell in battle at Winchester and at Cedar Creek. The Legislature of Vermont, after expressing the gratitude of the people of the State to Colonel Hill, proceeds as follows:

"*Resolved*, That the kindly spirit in which the inhabitants of the Shenandoah Valley received the citizens of this State September 19th, 1885, and aided them in dedicating monuments to their fallen sons, merits our warmest thanks, and the noble response of the Mayor of Winchester when requested by the Governor of Vermont to protect the monument, saying, 'We will guard it sacredly, and rather than allow a single letter to be effaced on its pure white surface, we would wish that it might be extended to the clouds, and that angels of peace might hover around its summit, symbolical of the union of friends, now so firmly established between all sections in our land,' is received as the fraternal sentiment which binds Vermonters with Virginians."

I pause to pay tribute to the memory of a distinguished son of Vermont who was one of the founders of this Association, and from its organization has been the Chairman of its Executive Committee. Luke P. Poland died suddenly on 2d of July last. Born in the year 1815, at the early age of thirty-three he was elected by the Legislature of Vermont one of the Judges of the Supreme Court. This position he held by successive annual elections for seventeen years, having been made Chief Justice in the year 1860. He represented Vermont in the United States Senate from November, 1865, to March, 1867. Frequently returned by the people of his district as member of Congress, his career in the House of Representatives was distinguished by the fidelity and ability which characterized his life. He was always active and earnest in the discharge of duty, whether as counsel or as Judge, as Senator or Representative in Congress, or as member of the State Legislature or as Regent of the Smithsonian Institute or as Trustee of the University of Vermont. In all

of these relations he was eminent, because he was a man of great originality of thought. The dignified earnestness of his character did not chill his nature or cast a shadow over his social life, for he was a genial gentleman, rich in conversation and humor. On his tomb should be inscribed the well-known line of Horace:

"Justum ac tenacem propositi virum."

VIRGINIA.

An extra session of the Legislature of Virginia was held for a short period. A new code was adopted to go into operation on 1st of February, 1888. This code is a revision of the statutes of the State, made by a commission which had been engaged on the work for several years; it contains a married woman's act substantially similar in its provisions to the legislation of the English statute of 1882, called Lord Selborne's Act.

WEST VIRGINIA.

A candidate for admission to the bar, unless he be a graduate of the law school of the University of West Virginia, must undergo a satisfactory examination before three judges.

An act has been passed to lay a tax of two and a half per cent. on collateral inheritances, also to require the plaintiff in suing out an attachment to state in his affidavit the material facts relied upon by him to show the existence of the grounds upon which his application for the writ is based, unless the ground be non-residence of the defendant. By an act similar to that passed in Rhode Island, orphan asylums are authorized to provide suitable homes for minors committed to their care; a comprehensive law regulating the working, ventilation, and drainage of mines has been enacted; no boy under twelve years of age and no female can be employed to work in mines, and an attempt by any person or combination of persons by force, threats, menace, or intimi-

dation to prevent any one from working in mines who may desire to do so is punishable by fine or imprisonment. Payment of wages every two weeks in cash to operatives in mines and to employees of manufacturing establishments is enforced. The effect of alcoholic drinks on the human system is to be taught in the public schools, and an amendment to the Constitution prohibiting the sale of intoxicating liquors, except for sacramental, medicinal, and mechanical purposes, has been proposed by the Legislature, and it will be submitted to a vote of the people at the next general election.

WISCONSIN.

In Wisconsin, the father of a minor child, and in case of his death the mother, is allowed to appoint by will a guardian therefor. In case a person dies leaving no debts, or his estate has been settled, and the administrator or executor has been discharged, a special administrator may be appointed for any special purpose which shall be stated in his letters of administration, and when that purpose has been served his authority ceases. To the actions which survive at common law Wisconsin has added actions for assault and battery, false imprisonment, or other damage to the person; it has also extended the liability of municipal corporations for injuries by mobs, so as to include responsibility for any bodily harm or injury sustained by persons not implicated in the riot who have not by their own act or negligence contributed to the injury. Where the mortgagor of a stock of goods, or stock in trade, remains in possession, and is permitted to make sales and apply the proceeds to the payment of the mortgage debt, he is required to file every sixty days a sworn statement of sales made and of additions to stock; if he fails to do so, the mortgage debt becomes due and payable, and the mortgage ceases to be a lien as to third persons at the expiration of fifteen days thereafter.

The absolute power of alienation cannot be suspended by any limitation or condition for a longer period than during

the continuance of two lives in being at the creation of the estate and twenty-one years thereafter, except when real estate is granted or devised to literary or charitable corporations created by the laws of the State, or where a contingent remainder in fee is created on a prior remainder in fee, to take effect in the event that the persons to take under the first remainder die under twenty-one years of age. When an assignment is made for the benefit of creditors, the assignee may, in the name of the debtor, contest the validity of any attachment levied on his property within sixty days prior to the assignment, and he may traverse the affidavit on which the attachment issued. If a married man execute a mortgage of personal property exempt from seizure, such mortgage is not valid unless signed by his wife in the presence of two witnesses. The formation of corporations for the purpose of carrying on any trade or business on the co-operative plan has been authorized, the shares to be not less than one dollar nor greater than ten dollars each. Corporations may be organized for the purpose of insuring or guaranteeing owners and mortgagees of real estate from loss by reason of defective titles or incumbrances. Executors or trustees who are authorized by the will of the testator to organize a corporation, may, individually or as executors, together with the legatees, form a corporation to carry out the intentions of the testator as expressed in the will, and may convey to such corporation the property referred to in the will, or subscribe for stock to the value of the property, and transfer the property in payment of the stock. The safety and health of employees in factories and workshops have been provided for by acts regulating those establishments and enlarging the powers conferred on the State factory inspector.

"Boycotting" has been declared unlawful and is punished by fine and imprisonment; black-listing employees by employers is prohibited, and interference by threats, intimidation, or coercion with persons employed at lawful labor, or with the use of or operation of machinery, cars, or engines,

by injuring the same, or by removing any part thereof, is also punished with fine and imprisonment. An act has been passed to protect children from neglect, abuse, or the vicious or immoral habits of parents or guardians or any person having custody of them, and to remove them to a comfortable home, or to such place of safe-keeping as may be available; the removal is effected by judicial authority after due notice to the parents or other custodian of the children. The sale of liquor to a drunkard, or to a person given to the excessive use of drink, may be forbidden by his wife or by the supervisors or by the trustees of the village or the aldermen of a city or any of them; the penalty for disobedience is fine and imprisonment. Milliners must have incurred the displeasure of Wisconsin men if their sentiments are expressed in a spiteful law which forbids the killing of birds for millinery purposes. You cannot in that State kill or catch for a milliner any robin, sparrow, thrush, bluebird, swallow, catbird, kingbird, woodpecker, flicker, pigeon, dove, blackbird, wren, finch, lark, pewee, oriole, humming-bird, bunting, grackle, grosbeak, warbler, flycatcher, swift, waxwing, chickadee, creeper, goatsucker, tanager, or whip-poor-will; it is a misdemeanor to kill for a milliner any bird in the foregoing catalogue, which the State ornithologist must have prepared.

The enforcement of the law, I apprehend, will be difficult, as the violation of it depends on the intention of the person killing, and I venture to assert that the murder of birds will go on in Wisconsin, and the milliners will get them, and yet they will all be killed for the hairdresser, the florist, the baker, the butcher, but not one for the milliner. Wisconsin has made it criminal for an architect to draw plans for, or superintend the erection of any school-house, church, factory, hall, or hotel without providing the fire-escapes and outward swinging doors required by law. The abduction or the deceitful enticement of chaste unmarried women to improper places is punished by imprisonment in the penitentiary not more than fifteen nor less than five years. A com-

mon drunkard may be sentenced to imprisonment in an inebriate asylum for not more than two years nor less than three months; and when a person is sentenced to imprisonment in the county jail the court may also sentence to hard labor under the direction of the supervisors of the county where the offense was committed. The Governor of this State is directed to have placed in the old Hall of the House of Representatives at Washington "a statue of Pere Marquette, the faithful missionary, whose work among the Indians and explorations within the borders of the State in the early days are recognized all over the civilized world."

It is my impression that this long and, I fear, tedious review will give you a very correct idea of the tendency of public thought, and of the influence of the legal profession in directing that tendency. The effort to repress crime, the anxiety to ameliorate the condition of laborers, the solicitude for women and children, and the energy of the legislation respecting corporations, while they attest the evils of the day, nevertheless strengthen our confidence in democratic institutions, and increase our respect for the intelligence and virtue of the American people.

Having performed the duty assigned me, I declare the Tenth Annual Session of the American Bar Association to be now open.

ANNUAL ADDRESS

BY

HENRY HITCHCOCK.

Mr. President and Gentlemen of the Association:

The objects of your Association are defined in the first Article of its Constitution in these words:

"To advance the science of Jurisprudence, promote the administration of Justice and uniformity of Legislation throughout the Union, uphold the honor of the profession of the law, and encourage cordial intercourse among the members of the American Bar."

The purposes thus declared indicate the wide range of topics appropriate to the annual address for which your By-Laws provide.

It was truly said by the eminent and learned orator at your second annual meeting (Mr. Cortlandt Parker) that nothing tends more to uphold the honor of our profession than to recall its heroes from the past, and dwell on their usefulness to the country. And so, in former years, we have listened with instruction and delight to discourses worthily commemorating the learning, the virtues, and the public services of Marshall and Taney, of Hamilton and Madison, of Paterson, Petigru, and Legare. More recently, your purpose of promoting the administration of justice was illustrated by an address replete with important suggestions for improving the mode of trial in the United States—the fruit of ripe experience and thoughtful observation; while other eminent jurists, on your invitation, have sought to advance the science of Jurisprudence—one by a masterly survey of American laws and institutions based upon the Common

Law, another by pointing out, with singular learning and research, the relations and the obligations of that system to the Civil Law, the most enduring triumph of Roman genius.

It is not less appropriate to the objects of this Association, composed of lawyers from all parts of the United States, who are not only familiar with the daily operation of existing statutes upon the vast and varied interests of our people, but also capable of largely influencing the legislation of their respective States, to consider how far those statutes, in respect of any subject of general importance, fall short of securing the ends designed by them, and in what respects they may be simplified or improved.

Especially is this true of those statutes commonly known as General Corporation Laws. By these I do not mean all laws relating to corporations—much less the Law of Corporations in general as expounded by the courts. I refer only to those general Acts, under and in virtue of which private corporations may be formed for purposes of common profit, by the voluntary action of individuals; which provide the machinery for organizing and operating such corporations, and prescribe their rights and powers, including the delegation to certain classes of them of extraordinary powers peculiar to the State itself; and by means of which, and of the facilities and privileges so conferred, and of the vast aggregations of capital thus made practicable, wholly new economic conditions have arisen, presenting for solution not only new questions of law, but new political and social problems of the gravest importance.

But the suggestions I shall offer to you in regard to these Acts, relate only to one aspect of them—namely, the conditions upon which such privileges are granted to individuals, and the sufficiency of the precautions taken against the misuse of those powers. It would be quite beyond my appropriate limits either to analyze their provisions in detail, or to discuss the larger questions of State policy which they involve.

Perhaps no branch of municipal law has shown greater or more rapid development, during fifty years past, than that relating to private corporations; whether in respect of the new legislation to which it has given rise, both constitutional and statutory, or the mass and variety of important litigation it has involved, or the novel and difficult questions presented by that litigation. Not that the conception of a corporation, as an artificial person distinct from the individuals composing it, and clothed by law with rights and powers of its own, is a modern one. It is found in the Roman law, though at first only in a rudimentary shape. Blackstone, on the authority of Plutarch (1 Bla. Comm. 468), attributes the invention of corporations to Numa Pompilius; though Chancellor Kent (2 Comm. 268) mentions indications in the Pandects that their origin was to be found in the laws of Solon. The Digest of Justinian clearly distinguishes between the rights and liabilities of the corporate whole and those of individual members. *Si quid universitati debetur, singulis non debetur; neo quod debet universitas singuli debent.* (Dig. III, 4; Lex 7, § 1.)

I need not remind you how fully that conception was developed in the Common Law, nor of the historical importance of the municipal and trading corporations of the Middle Ages, nor of the jealousy of ecclesiastical corporations, so emphatically expressed in the English statutes of mortmain. The saying that corporations have no souls is at least as old as Lord Coke; and the logic by which, as reported in Bulstrode (*Tippling* v. *Pexall*, 2 Bulst. 233), Manwood, Chief Baron, as long ago as 1613, demonstrated its truth, leaves nothing to be desired. Says the reporter:

"The opinion of Manwood, Chief Baron, was this, as touching corporations, that they are invisible, immortal and that they have no soul. A corporation is a body aggregate, none can create souls but God, but the King creates them, and therefore they have no souls."

The legal conception of a corporation always potentially

included the legal problems which nowadays puzzle so many courts and give occupation to so many lawyers; just as a drop of nucleated protoplasm, according to modern biologists, contains all "the promise and potency" of the most highly organized matter.

But it is only under favorable conditions that these problems emerge for solution—to say nothing of those economic and political questions as to the advantages and dangers of corporations and joint stock companies which have come to be so widely, if not always wisely, discussed. Such conditions are now afforded by the immensely increased facility of constructing and employing this most powerful instrument of modern industrial civilization; with the result, on the one hand, of its application on a scale deemed alike impossible and undesirable by some of the wisest political economists of former generations, and, on the other, of complaints and apprehensions which, if well founded, demand the most earnest consideration by their successors.

This increased facility is chiefly due to the General Corporation Laws which are now in force in every State in the Union. (1 Morawetz Corp. § 38.) In twenty-four States the Constitution forbids the legislature to create any corporation except through general laws, and a like prohibition is imposed upon Territorial legislatures by section 1889 of the Revised Statutes of the United States; though in some States this prohibition does not include municipal or charitable corporations, while in Alabama and Georgia the legislature may still grant special charters to manufacturing, mining and some other industrial and business companies. The difference, in point of delay, trouble and expense, between forming a private corporation under a general law, and obtaining a special charter, may be likened to that between modern traveling by railroad and the old-fashioned stage coach. For although the English parliamentary practice of private bill legislation, with its attending difficulties and delays, never obtained in this country, and the numerous special charters formerly con-

tained in the Session Acts of the various States show the great and constantly increasing demand for them—while the extraordinary privileges and exemptions sometimes conferred in such charters equally show the recklessness with which they were too often granted—yet the comparative brevity and infrequency of legislative sessions, the pressure of other public business, and the antagonism of rivals, to say nothing of agents' expenses, all tended to restrict their number. Under a general corporation law, the enterprise being once agreed on, it is usually required only that the parties interested shall execute in due form, and file in some designated public office, a brief certificate, setting forth certain particulars concerning the objects and organization of the proposed corporation, and pay certain moderate fees: upon which they become entitled to receive from the Secretary of State—or, in some States, from the court to which the application must be made—a certificate which is equivalent to a legislative act of incorporation. And it is familiar law, that the corporate rights thus acquired, being accepted and exercised, can be impeached only by a direct proceeding in the name and behalf of the State.

All this is so familiar to us that we are apt to overlook its significance, as one of the political and social phenomena attesting and largely contributing to the unexampled development of the material and business interests of this country. Professor Hadley, in the opening paragraph of his very valuable work on Railroad Transportation, describes the industrial revolution which has taken place in this country within fifty or sixty years past as even more important than the political revolution of the last century; and refers to the enormous development of our transportation system by means of railroads, as the most important symptom of national activity in business or in politics. But the railroad is only one of the numerous classes of corporations which are being constantly organized under general laws. It cannot be doubted that such laws, in respect of all classes of private

corporations, greatly stimulate the demand which originally brought about their enactment. Like every true social phenomenon, it has been a growth, at first tentative and slow, then more rapid and general, and at last practically superseding former and more cumbrous methods. Chancellor Kent, in his Commentaries, first published more than fifty years ago (2 Kent's Comm. 272), giving a brief history of corporations, speaks of "the propensity in modern times to multiply civil corporations, especially in the United States, where they have increased in a rapid manner and to a most astonishing extent;" and yet he apparently refers only to special charters by legislative act. The later work of Angell & Ames, though alluding to general corporation laws, still implies that corporations are commonly created by special Act. But in all modern treatises on private corporations the new questions which have arisen under general corporation laws occupy a prominent place.

Actually, in twenty-four States and all the Territories, and practically throughout the Union, the new method of incorporation has superseded the old. Such legislation is no longer for individuals, but for whole classes of industries. If its advantages are so much the more widely enjoyed, in like or even greater proportion its possible evils and dangers are multiplied. And it follows, that if there be any class or profession specially qualified to foresee and guard or aid in guarding against those dangers, then a special responsibility rests upon its members in that regard.

The most cursory examination of the statute books of the several States shows this growth in its successive stages. For example, in Pennsylvania, a State described by one of her own judges as "an extensive manufacturer of home-made corporations" (per Duncan, J., in *Bushell* v. *Commonwealth Ins. Co.*, 15 S. & R. 186), the earliest step in this direction seems to have been taken in 1791, by an Act which authorized the incorporation of associations formed for literary, charitable, and religious purposes, but no other. Upon the

approval by the Attorney-General, and then by the Supreme Court, of articles setting forth their objects and organization, the Governor was authorized to order their enrollment, upon which the association became incorporated. In 1833 this Act was amended so as to include mutual beneficial associations, also fire engine and hose companies. In 1840 the courts of common pleas were authorized to incorporate associations, but only such as above described, by an order entered of record, upon approval by such court of the articles and objects proposed, after three weeks' notice by publication, the approval of the Attorney-General being dispensed with. In 1836 this method of incorporation was for the first time applied in that State to manufacturing associations, but only to those formed for manufacturing iron; upon the prior approval of their articles by the Attorney-General and the Governor, and proof that the entire stock was subscribed in good faith, and one-fourth paid up. Another Act passed in 1849 made like provision for incorporating companies for the manufacture of cotton, woolen or silk goods, iron, paper, lumber or salt; and during the twenty years following the powers of common pleas courts, under the Act of 1840 already mentioned, were extended by numerous amendatory and supplemental Acts to many other specified kinds of business. In 1863 a more elaborate Act authorized the incorporation of any three or more persons as a trading company for carrying on mechanical, mining, quarrying and manufacturing business, except the manufacture of intoxicating liquors; the only requirement being the filing in the Auditor-General's office of a certificate on oath, stating the name, objects, location, and capital of the proposed company; and in 1868 a separate Act was passed authorizing the incorporation, by certificate, of co-operative associations for carrying on any lawful mechanical, manufacturing or trading business. This Act was noteworthy as providing for what is now called profit-sharing among workmen and customers, as well as stockholders, after the accumulation of a sinking fund 30 per cent. in

excess of the capital. The same general policy has ever since prevailed in that State.

A like growth appears in the legislation of New York. The first of such Acts in that State was passed in 1796, authorizing the voluntary incorporation of public libraries (see 22 Wend. 53); but the first general incorporation Act for business purposes was that of 1811 (2 Kent's Comm., pp. 272–4), by which five or more persons might be incorporated for carrying on specified descriptions of manufacturing business, on filing a certificate in the Secretary of State's office, giving the corporate name, capital, objects and location. This Act was from time to time enlarged by amendments, until the enactment in 1848 of what is known as the "Manufacturing Corporation Act," applicable to associations formed for manufacturing, mining, mechanical, chemical, agricultural, horticultural, medical, mercantile or commercial purposes; which was further amended between 1848 and 1884 by more than fifty Acts specially extending its provisions to a great variety of purposes and occupations. Distinct from these is the important Act of 1875, known as the "Business Corporation Act," authorizing the formation of corporations for any lawful business, except banking, insurance, railroads, trust and safe deposit companies. Both these Acts, as amended, are still in force, but with important differences. Under the Manufacturing Act, each shareholder has one vote at corporate elections for each share of stock; while, under the Business Corporation Act, each shareholder is entitled to as many votes as shall equal the number of his shares, multiplied by the number of directors to be elected, and may distribute his votes at pleasure, casting all or any part for one or more candidates. A like provision for the protection of minority stockholders is found in the Constitutions of Illinois (1870), Pennsylvania (1873), and Missouri (1875), and its adoption in one of the general corporation Acts of New York, while not found in the other, illustrates the tentative character of such legislation up to the present time. The

New York Act of 1875 also provides for the formation of "Limited Liability" companies, and "Full Liability" companies, differing as indicated by those terms.

The general banking law of New York, originally enacted April 18, 1838, exemplifies not only this method of incorporation, but also the causes which promoted its adoption. A restrictive clause in the New York Constitution of 1821 required the assent of two-thirds of the members-elect to each branch of the Legislature to any bill creating any body corporate; the result, it is said, of general dissatisfaction with the exclusive privileges theretofore granted to banking corporations by special Act. The Act of 1838 authorized the formation of banking associations by any five or more persons, on filing a certificate with the Comptroller, giving the corporate name, location, capital stock, names of shareholders and proposed duration, and conferred on such associates ample corporate powers for the business of banking, but under regulations whose value experience afterwards fully attested. This Act was passed by only a majority vote. Its validity was questioned, under the constitutional clause above mentioned, in the important cases of *Thomas* v. *Dakin*, 22 Wend. 9, and *Warner* v. *Beers*, 23 Wend. 102. The question was discussed with great ability and learning by eminent counsel and by the courts. The Act of 1838 was sustained, although it was in effect admitted that these associations were bodies corporate; on the ground, distinctly stated by Chancellor Walworth (23 Wend. 126–7), that the constitutional restriction of 1821 was aimed only at previously existing evils of corporate monopolies beyond legislative control, and that, though the Act of 1838 did confer corporate powers upon these banking associations, it was not within the spirit and intent of the restrictive clause of the Constitution, because it made the business of banking free to all citizens alike for limited periods, while reserving control by the State over the privileges thus granted. This Act, and the banking system successfully established under it, were the forerunners

of our National Banking System—the widest and most important application of this method of incorporation.

The introduction of general incorporation laws in Georgia at a much later date brought before the courts a different question as to their validity. Such Acts having been passed in 1843 and 1845, authorizing the incorporation by decree of the Superior Court, if the petition filed was approved on examination by the court, of certain classes of manufacturing and business companies, their validity was questioned in the case of *Franklin Bridge Co.* v. *Wood*, 14 Ga. 80, decided in 1853, on the ground that such Acts were an unconstitutional delegation of legislative power to the courts. But it was held no such delegation of power, but a direct legislative grant of corporate franchises, to take effect on fulfillment of prescribed conditions, and the court referred to such associations as "the usual and favorite mode of conducting the industrial pursuits of the civilized world in modern times."

It would be interesting, if time permitted, to trace in the legislation of other States the like gradual adoption and subsequent rapid growth of this method of incorporation under general laws, now so familiar and universal, as well as to note in detail to what extent and in what manner, under the Acts now in force throughout the Union, conditions are imposed or precautions taken by way of safeguards, either for those who embark their capital in such organizations, or for those who are likely to give credit to them. But such inquiries would fill a volume. I can only allude to some of the general facts which make up the present situation.

How greatly that situation has changed during the past fifty years, in respect of the part which corporate organizations perform in the conduct of the vast business interests of our people, is something scarcely realized until attention is called to it. Yet it is a phenomenon whose relations to our future history may prove to be of the highest importance, and which, in its various aspects, is attracting the earnest attention of many thoughtful men.

Complete statistics of corporate organizations and investments in this country are not attainable. The following, from official sources, may give some imperfect idea of them:

The number of national banks reported by the Comptroller of the Currency as doing business in 1886 was 2,852; their total capital stock was something over $548,000,000; their total circulation, $228,800,000; their deposits, $1,191,700,000; total surplus fund, $157,300,000; their other liabilities, $387,800,000.

Poor's Railroad Manual for 1886 gives detailed statistics of American railroads, showing aggregates as follows:

Total number of railroad companies in the United States, ...	1,827
Tonnage moved in 1885, ...	437,040,099
Capital stock, ...	$3,817,697,832
Funded debt, ...	3,765,727,066
Net earnings, 1885, ...	269,493,931
Interest paid, 1885, ...	189,426,035
Dividends paid in 1885, ...	77,762,105

The following official figures, from the Secretary of State's office, of Illinois, exemplify the rate at which new corporations were formed in that State during the year 1886,—or, to speak more accurately, they show the number, classification and proposed capital stock of the new corporations, authority for organizing which was applied for and granted under the general law during that year. It by no means follows that the amount of capital stock stated in the certificate and authorized by the license issued by the Secretary of State, was in the case of each corporation, or perhaps any of them, actually paid up, or even that all of it had been subscribed. But for our present purpose these figures are interesting and significant:

Total number of companies incorporated in 1886, ...	1,714
Companies not for profit, ...	344
Companies for profit, ...	1,370
Total capital stock (authorized), . .	$819,101,110

Among these were included:

30 Agricultural Companies—aggregate capital stock, ...	$2,614,700
3 Telegraph Companies—aggregate capital stock, ...	2,600,000
110 Publishing Companies—aggregate capital stock, ...	3,441,700
104 Mining Companies — aggregate capital stock, ...	102,011,350
41 Railroad Companies—aggregate capital stock, ...	109,049,900
87 Building and Loan Companies—aggregate capital stock, ...	271,960,000
632 Manufacturing Companies—aggregate capital stock, ...	239,951,700

In the latest official report of the Insurance Department of the State of Missouri, the following summary is given of the insurance business done by corporations in that State during the year 1886:

Life Companies (home and foreign), ...		26
Total assets of same, ...	$493,157,366	
Premiums taken in Missouri in 1886,	1,772,160	
Claims paid in Missouri in 1886, .	851,011	
All Companies other than Life (home and foreign), ...		192
Total assets, December 31, 1886, . .	$211,422,190	
Total income during 1886, ...	68,184,013	
Total losses paid during 1886, . . .	56,181,768	
Premiums received in Missouri in 1886, ...	$4,522,136	
Losses paid in Missouri in 1886, . .	2,460,476	

Such figures tend to confirm an estimate recently made by a writer of authority, from whom I quote (The Growth of Corporations, by Dr. R. T. Ely; *Harper's Monthly*, June, 1887):

"It may be safely said that when we add [to figures already given for national banks and railroads] the capital of manufacturing corporations, mines, insurance, telegraph, telephone and gas-light companies, canals, street-car corporations, steamship companies, land-owning corporations and syndicates, and the various other classes of corporations, it will be found that it is within the bounds of moderation to estimate the wealth of corporations as one-fourth of the total value of all property in the United States. The most significant fact, however, is the rapidly increasing proportion of all the resources of the country which belongs to corporations. * * * Another authority has estimated that the wealth of corporations of the United States is increasing three or four times as rapidly as those of private concerns."

In the light of such statements, it is of peculiar interest to recall the views expressed more than a century ago by Adam Smith, in his celebrated essay on "The Wealth of Nations," in reference to joint stock companies, by which he meant business corporations such as we are considering; for when that author speaks of *corporations* (Oxford ed. 1869, vol. I, pp. 125–36; II, p. 44), as he does in terms of severe denunciation, he refers to the ancient *incorporated trades*, which possessed exclusive privileges, and enforced stringent regulations in favor of their own members, jealously limiting the number of apprentices and workmen in their respective trades.

As to joint stock companies, he maintained (Ib., vol. II, pp. 325–43; book V, ch. I, art. I) that since the directors of such companies are managers rather of other people's money than their own, it cannot be expected that they should watch over it with the same anxious vigilance which usually characterizes private copartners; that it seems contrary to all experience that a joint stock company should successfully compete for foreign trade against private adventurers; that manufacturing corporations scarce ever fail to do more harm than good; that the only trades which it seemed possible for a joint stock company to carry on successfully were those whose operations could all be reduced to a uniform method:

which, he thought, were limited to four, namely, banking, insurance, navigable canals, and supplying water to a great city; and that (vol. II, p. 342)—

"To render the establishment of a joint stock company perfectly reasonable, with the circumstance of being reducible to strict rule and method, two other circumstances ought to concur. First, it ought to appear with the clearest evidence, that the undertaking is of greater and more general utility than the greater part of common trades; and secondly, that it requires a greater capital than can easily be collected into a private copartnery. If a moderate capital was sufficient, the mere utility of the undertaking would not be a sufficient reason for establishing a joint stock company, because in this case the demand for what it would produce would be readily and easily supplied by private adventurers. In the four trades above mentioned, both those circumstances concur."

It should be remembered that these views related to the question of the *general utility* of such organizations to the community; how far they contribute to or secure the permanent welfare of the many, rather than the enrichment of the few,—which, I take it, is the test of all wholesome legislation. It may also be observed, that banking and insurance, the two principal trades for carrying on which Adam Smith thought joint stock companies expedient, because their operations are "reducible to strict rule and method," are precisely those the prosecution of which, unless restricted by stringent laws and precautions against fraud, dishonesty and recklessness, has produced the greatest commercial disasters, notably in our own country. It does not follow that the general maxims or principles of business and legislation which Adam Smith announced were unsound because he may have erred in their application. Indeed, since the *Wealth of Nations* was published, in 1776, the progress of science and the triumphs of invention have completely revolutionized the conditions and methods, not only of commerce, but of almost all, and especially of manufacturing, industries. As Dr.

Ely remarks,—"The word 'manufacturer,' in Adam Smith's *Wealth of Nations*, did not mean a great proprietor, but a man who worked with his own hands,—an humble artisan." His three requisites of a joint stock company,—that the business to be carried on shall be of great and general utility, its operations reducible to strict rule and method, and requiring capital beyond that of ordinary partnerships,—are they not as completely fulfilled by the railway, the ocean steamer, the telegraph line, the cotton mill, the Bessemer rail mill, not one of which was dreamed of when he wrote, as by a bank or a canal company? Except the telegraph, these industrial Titans of our day are the progeny of Steam, of whose future triumphs the well-known lines in Erasmus Darwin's *Botanical Garden*, published in 1791, a year after Adam Smith died, were still but a bold prediction:

> "Soon shall thine arm, unconquered Steam, afar
> Drag the slow barge, or drive the rapid car."

Bold as it was, how far beyond the utmost vision of the poet, or the imagination of the scientist, is its fulfilment! Years were yet to elapse before the labors of Watt, supplemented by those of Fulton, of Robert Stephenson, of Eli Whitney, of Arkwright, and of a host of later inventors, should transmute that glowing vision into sober reality. To-day, on land and sea, we behold the mighty forces of Nature harnessed for the service of mankind, under the guidance of ever progressing Science, until the dreams of mediæval magic, even the fables of the Arabian Nights, are less marvelous, save that it has become so familiar, than the work daily performed by those instruments of modern civilization for the welfare and comfort of the humblest citizen.

But the successful use of such instruments, on a great scale, requiring the constant and disciplined service of many thousands of operatives, large numbers of them skilled in their callings, implies not only enormous aggregate capital, but also complete organization, strict method, and permanent

management, undisturbed by the casualties which suspend or cut short individual enterprise. In other words, corporate organization for such purposes is itself an instrument of civilization, as indispensable to meet its larger demands as those other instruments,—the machinery which hums in its factories, or the railways and steamers which transport their products around the globe. It was inevitable that it should be employed and developed to make the most of them; equally inevitable, in this age of triumphant democracy, that it should take the form most conducive to the general benefit,—that it should no longer minister to monopolies, but should be made available to all who will comply with the conditions which the State, also for the common benefit and protection, annexes to its use. This is the real significance of general corporation laws, as compared with the method of granting charters only by special Act; and the consequent enormous multiplication of corporate organizations, since it multiplies in like or larger proportion whatever evils may result from them, demands a still severer scrutiny of those dangers, and corresponding precautions against them.

I need not remind you that important questions, some of public policy, others involving private interest, arise in reference to such legislation, which are quite beyond my present purpose. Among the former are:

Whether corporate privileges ought to be granted in any case except under such circumstances as suggested by Adam Smith—that is, only for enterprises of great and general public utility, demanding extraordinary capital, and whose operations are reducible to strict order and method?

Whether the liability of such associates for corporate debts should be limited to their subscriptions for stock, or—as provided by the Missouri Constitution of 1865—should be for double that amount, or should be unlimited, like that of ordidary partners?

As to these questions, modern political economists and legislators, both in this and other countries, in general agree

with John Stuart Mill (*Mill's Political Economy*, Am. ed., 1864, vol. II, p. 512), that under suitable conditions for the protection of those dealing with or trusting them there is no good reason why the State should raise objections to the association under corporate privileges of any number of persons for the prosecution of any lawful business, or should impose on such persons any liability beyond that which they choose and publicly announce that they are willing to assume. This, in general, is the present theory of American corporation laws, certainly as regards associations for purposes of private profit. And that such is their tendency was notably illustrated in Missouri by the general demand for and practically unanimous adoption of a constitutional amendment in 1870 abolishing the "double liability clause," which had been made a condition of all general corporation laws by the new Constitution of 1865, only five years before.

Under the head of private interest fall such questions as:

Whether the divided control and responsibility of corporate management, the less intimate personal relations between owners and employees, and the minimizing of the moral element in conducting their business, all of which are confessedly incident to corporate organizations as compared with ordinary partnerships, are disadvantages outweighing the inducements offered by the characteristic incidents of the former—namely, unbroken succession during the corporate existence, limited liability, with consequent greater and easier control of capital, and, in certain kinds of business, the diminished probability of competition. (See Professor H. C. Adams' *Outlines of Political Economy*, p. 20.)

But these questions, so long as the existing policy of legislation favors corporate organization, must be answered by the individuals who undertake such enterprises: and their answer is found in statistics such as already alluded to.

Assuming, then, the existence of general laws for the promotion of industrial enterprise by which corporate privileges for prosecuting any lawful business are offered to any associa-

tion of individuals upon equal terms to all desiring them, the question still remains:

Whether the conditions annexed to such grants by existing laws in the several States do adequately protect the public interest, and do minimize the attendant dangers of fraud, negligence, reckless speculation and other mischiefs to the community which may result therefrom?

I need hardly disclaim having undertaken to answer such a question as that on this occasion. That would mean nothing less than a critical review of all existing general corporation laws in the several States.

I do desire to emphasize it as one of the most important questions of practical legislation; to the solution of which, necessarily gradual and tentative, the members of an association like this are especially competent—may I not say, are under a peculiar obligation—to contribute, in their respective States.

But I may be permitted, in conclusion, to offer one or two suggestions as to some of the more obvious defects in existing laws of that description; not in the hope of saying anything new, but in the belief that whatever is true or is worth saying on any question of social or legislative reform must, as a rule, be said many times and by many persons before it is likely to be put in practice by those who have the power.

One obvious danger in respect of corporate organizations with limited liability is the facility of obtaining credit beyond their actual resources, and the consequent temptation to rash enterprises and disastrous speculation, resulting in loss to all concerned. The fact is a familiar one, however we may account for it; and the legislation is defective, if not vicious, which does not guard against it. It is not enough to reply that those who deal with such companies should inform themselves of their true situation, and that it is no concern of the State to protect people against their own negligence; nor to

say, with Mr. Mill (*Political Economy*, Am. ed., 1864, vol. II, p. 513–14), that

"It is well ascertained that associations with unlimited responsibility, if they have rich shareholders, can obtain, even when known to be reckless in their transactions, improper credit to an extent far exceeding what would be given to companies equally ill-conducted, whose creditors had only a subscribed capital to rely on."

Those who give undue credit to unlimited liability companies, relying on the personal responsibility of wealthy shareholders, may over-estimate that wealth and suffer in consequence, but for such mistakes the State is not responsible. But when the State not only confers upon a body of associates the privilege of corporate existence and succession, but expressly shields them, except to the extent of their contribution to the enterprise, from the personal liability which otherwise would attach as against their entire individual estate, it does become a party to the transaction and is clearly bound to annex to those privileges and exemptions, and to enforce, by adequate penalties, such conditions of *bona fide* capital at the start and of absolute good faith and publicity at all times afterwards as shall make it certain that neither those who deal with nor those who embark their money in such organizations need at any time be misled as to their true condition, except through their own willful negligence. This, indeed, Mr. Mill admits, for, while contending that there seems no reason that the law should be more careful of the interests of third persons than they will themselves be, he adds:

"*Provided* no false representation is held out, and they are aware from the first what they have to trust to."

And he further says:

"The law is warranted in requiring from all joint stock associations with limited responsibility, not only that the amount of capital on which they profess to carry on business

should either be actually paid up or security given for it (if, indeed, with complete publicity, such a requirement would be necessary), but also that such accounts should be kept accessible to individuals, and, if needful, published to the world, as shall make it possible to ascertain at any time the existing state of the company's affairs, and to learn whether the capital which is the sole security for the engagements into which they enter still subsist unimpaired, the fidelity of such accounts being guarded by sufficient penalties."

Complete publicity, indeed, is the true safeguard both for stockholders and creditors, in connection with severe penalties, civil and criminal, against false statements either willfully or negligently made. In some way and to some extent this is in general recognized by such laws. It is a characteristic feature of the national and other banking systems which have proved successful, and has come to be fully recognized as essential to the business of insurance. But the provisions to that end, in respect of almost every other class of business corporations, are for the most part wholly insufficient.

For example, section 18 of the New York Business Corporation Act of 1875—a law in many respects unusually well and carefully drawn—requires the filing *once a year*, in the Secretary of State's office, of a statement signed by the President and a majority of the directors, and sworn to by the President or Secretary, showing (1) the amount of capital of the corporation; (2) the proportion actually paid in; (3) the amount, "and, *in general terms*, the nature of its existing assets and debts;" (4) the names of its then stockholders, and (5) all dividends declared since the last report; upon failure to file which report as required the directors are made jointly and severally liable for all corporate debts then existing or contracted before such report is made. This is the only provision of the kind in that Act. It is good as far as it goes. But I suspect that if the President of such a corporation applied to any well-managed bank in New York city, say in November, or even in July, for a discount, and they should inquire of him as to the condition of his com-

pany, it would amuse them to be answered that if they would kindly send to the Secretary of State's office at Albany, they would find a report, filed there according to law in January preceding, giving in half a dozen lines *the general facts* above mentioned.

The Colorado corporation law requires a like annual report to be filed, but also authorizes any stockholder holding 15 per cent. of the entire capital to demand at any time from the cashier or treasurer a sworn statement giving a particular account of all the corporate assets and liabilities; but that officer is allowed twenty days in which to prepare such statement, and he cannot be required to make one out oftener than once in six months. Fancy a partner in a private concern limited to one trial balance in six months, and that to be furnished only on three weeks' notice!

Another and much more important defect in general corporation laws exists, universally, I believe, in respect of railroad and other corporations to which is delegated the sovereign power of eminent domain. It is an extraordinary fact that such a power, which the State itself confessedly ought never to exercise save on grounds of public necessity, should be at the command of irresponsible individuals for purposes of private gain, not only without any guarantee whatever that the public interest will be promoted thereby, but when it is perfectly well known that it may be and has been deliberately availed of for merely speculative purposes. Legitimate competition is the life of trade, but the reckless competition of adventurers is alike unjust to vested interests and mischievous to the community at large. The facility with which, under loosely drawn railroad laws, purely speculative railroad charters can be obtained has contributed not a little to develop the law of receiverships in late years. Under the general railroad law of my own State of Missouri, as I have had occasion elsewhere to remark—

"There is nothing to prevent any five men, whose combined capital would not enable them to lay and equip five

miles of track on a flat prairie, from forming a railroad corporation with power to construct a road five hundred miles long and to condemn private property for that purpose, for a line whose construction it is morally certain that no public interest really demands, and from which no experienced railroad man could reasonably expect dividends to accrue. It may be said that under such circumstances nobody would form such a corporation, or incur even the small expense required for obtaining such privileges. But experience shows that dividends on railroad stock, honestly earned by business actually done, are by no means the only source of profit on which the promoters of railroad corporations rely. Such things have been known as not only the projection but the construction of railroads on borrowed capital for the express purpose of compelling some other railroad company already in operation to buy out the new line at a profit to its builders and thus prevent competition. It is even said that railroad corporations have been formed, and railroads built, in the interest of construction companies whose outlay was repaid, with the addition of enormous profits on their work, not out of the proceeds of honest stock subscriptions paid up in cash, but by the sale of first mortgage bonds far in excess of the value of the line, floated upon a confiding public by virtue of rose-colored estimates of future business. A scheme like this involves no consideration whatever of public necessity. Its success depends simply upon the credulity of the public, and its outcome is either the collapse of the enterprise as soon as its original promoters have had time to unload, or a ruinous competition for business and a receivership of one or both of the competing lines, only one of which is needed."

There is nothing new in these strictures. Repeatedly have railroad commissioners in various States urged such amendments upon legislatures without effect—an example of which will be found in the Second Annual Report (1884) of the New York Railroad Commissioners, page viii. Such a condition of the law cannot be permanent. That it should be taken advantage of while it continues is to be expected, and the State is responsible for the consequences, which it not only permits but invites. It may perhaps be explained, though not excused, as an incident of the transition from the old to the

new method of incorporation. When railroad charters were granted only by special Act, the bill was necessarily subject, in theory at least, to the scrutiny and opposition of rivals, or others whom it might injuriously affect, at every stage. Its promoters were or might be obliged to show not only that the charter contained no objectionable feature, but some reason why that particular railroad should be built. But when that system was abandoned for the easy method of incorporation by certificate, no tribunal was provided before which that question should be raised. It was taken for granted, apparently, that if any small number of men want to build, or say that they want to build, a railroad, that is sufficient evidence of its necessity: except that where it is desired to lay tracks on the public streets of a city, it is in some States now provided that the consent of the municipal authorities must be obtained.

It would be easy, if time permitted, to point out other patent defects in the general corporation laws of the various States. Some consist in the ill digested and patch-work character of the law itself, the result of piecemeal and frequently inconsistent legislation; others in the lack of uniform requirements in respect of different classes of corporations, though under like conditions, for which no good reason exists, and which create confusion and uncertainty in the law; others in wholly insufficient and defective provisions for enforcing or supervising the fulfillment of the statutory requirements; others in the unrestrained permission to create mortgage and floating debts, without any reference to actual or available assets; others in the lack of precaution against the issue of stock or bonds without real and adequate consideration—though in some States this is now prohibited by the Constitution. To these fruitful topics I can barely allude.

We hear much about the general prejudice against corporations. It is almost a proverb that juries find against them whenever opportunity offers. There is too much truth in the saying, and injustice is often caused by that prejudice. So

far as it exists, there are various reasons for it, but I am convinced that it springs in many cases from defects in the laws under which thousands of new corporations of every description, for every imaginable purpose, are constantly organizing throughout these States, and whose failure, or whose abuse of the powers confided to them, often without actual fraud, constantly inflicts heavy losses upon stockholders and creditors alike which would have been impossible under suitable restrictions. No better illustration of this need be given than to compare the history of the National Banking system, through which is carried on with such splendid success so large a part of the enormous money transactions of this country, or that of the Savings Banks of the Eastern States, whose condition is the financial barometer of the working classes, with the misery and widespread ruin caused by the "wild-cat banks" of former days.

There is no reason why such evils should not be remedied. Indeed, recent constitutional and statutory provisions in various States plainly indicate a growing appreciation of them and successful efforts toward that end.

You will perhaps permit me, in closing these remarks, to repeat some suggestions, made on another occasion, as to some of the conditions which, or something like which, as it seems to me, should be annexed to every grant of corporate privileges under general laws. Of course I can indicate only a few of the more important ones, in a paper like this. In some States provisions of that nature have been in part adopted; in others they seem to have been wholly overlooked.

No private business corporation should be permitted to organize or exercise corporate powers until the full amount of its proposed capital stock is not only subscribed, but either actually paid up or payment thereof within a reasonable time actually secured: nor should it be permitted to create any bonded or mortgage indebtedness, as distinguished from current liabilities or floating debt, until the entire capital stock is

paid up—nor then without the consent of the stockholders specially given at a meeting called for that purpose (as now provided by the Constitutions of several States), nor without proper restrictions both as to the total amount of such indebtedness, which the New York Business Corporation Act limits to one-half the value of the corporate property, and as to the uses to which money so borrowed may be applied.

No private corporation should be allowed under any circumstances to incur current liabilities or floating debt beyond a fixed proportion—not exceeding two-thirds—of the actual cash market value of its unencumbered assets; directors permitting any violation of such requirement to be personally liable for the corporate debts.

Every private corporation should be required to file, not only with the Secretary of State, but in some convenient public office at its place of business, at least once in three months, a particular account on oath of its assets and liabilities, such as will enable creditors and others interested, without application to its officers, to learn its true position. Railroad and other corporations affecting public interest, should also be compelled to publish, monthly, such statements as that the public should at least have the opportunity of forming their own judgment as to the value of the stocks, which, in the absence of such information, are the playthings of speculators, and too often the ruin of *bona fide* investors.

No railroad or other corporation, whose franchises are to include the right to enter upon, appropriate or damage the property of third persons for *quasi* public uses, should be organized except in pursuance of the decree of a competent court, upon sufficient public notice and opportunity for all persons interested to be heard in opposition thereto; the petition for such decree to set forth in detail the route, location and other material particulars of the proposed enterprise, and satisfactory proof to be made, not only that it is required or justified by the public interest, but also that sufficient capital has been *bona fide* secured to provide for the estimated cost

of construction and all damages incident thereto. Under such conditions, not only the railroad track, but the railroad company, would rest upon solid foundations, to the great advantage of *bona fide* stockholders, even though somewhat to the discouragement of construction companies.

Suitable provision should be made for the enforcement, by proper State officers and by summary proceedings in court, of these general requirements; and any person interested as stockholder or creditor should be authorized, under proper conditions and security against vexatious attacks, to institute proceedings thereunder.

It goes without saying that no legislation can wholly prevent the evils and dangers so often complained of. Foolish people cannot be legislated into common sense, nor can reckless speculation be entirely prevented by the wisest laws. Stringent laws already exist in various States, intended to punish the abuses of private and public confidence for which corporate organizations afford peculiar opportunity. But prevention, as we all know, is better than cure.

It may be objected that provisions like these, strictly enforced, would diminish the number of corporations formed under present laws. But would they prevent the formation of a single *bona fide* business corporation, based on actual capital and prudent foresight? Is it the interest of any class of the community that any corporation should be formed except upon such conditions? Is it not the duty of the State to withhold such privileges, unless they are fulfilled? Surely such questions answer themselves.

Of all the safeguards above suggested the most important is that of securing the fullest publicity as to the resources and the actual condition of business corporations of every kind. No penalties can be imposed by law which will compare in efficiency with the common instinct of self-protection, armed with the knowledge thus furnished to the community. This is the conclusion to which the most experienced have come in

respect of railroad legislation, as the more recent and rapidly extending doctrine concerning railroad commissioners and their proper functions demonstrates.

Nor can reasonable objection be made to such requirements. Corporate privileges are granted by the State, not of right, but for reasons of public utility. The mere franchise of being a corporation, the right of carrying on a business for private gain without interruption by death, under a compact organization, with individual liability strictly limited in case of disaster to the amount voluntarily put at risk, and with opportunity of gathering from many sources small amounts of capital otherwise unavailable and thus obtaining the use of large aggregate sums, for which nothing is paid unless a profit is made—these are privileges of great value. And since experience shows that there is a constant temptation to abuse them, to the detriment of the community, it is not only reasonable but the duty of the State to deny them except upon complete and continuing assurance that this shall not be done. The objection that under such conditions business corporations would not be organized is not tenable. The disclosures of corporate assets and liabilities necessary for the protection of third persons are no greater than private traders are often called on to make and do make to obtain the credits they need. The business which cannot afford to make them is already too much expanded and ought to be wound up. By granting such privileges without due restraint and without supervision the State encourages that reckless spirit of gambling which is the bane of true commercial enterprise, which confounds luck with sagacity, which attributes to the laws of nature and the laws of trade those periodical panics and commercial crises which are in fact the proof of their violation.

In view of the considerations thus imperfectly presented, it may well be said, I think, that the perfecting of the General Corporation Laws of the several States of the Union is one of the most important pending questions of practical legislation. The fulfillment of that duty rests, of

course, directly upon those who are charged with enacting the laws. No doubt it must be a slow work, requiring much wisdom, patience and public spirit. But toward its fulfillment no more efficient aid can be rendered than that which may be afforded by the experience, the courage, and the integrity of the Bar.

PAPER

READ BY

HENRY JACKSON.

Indemnity the Essence of Insurance; Causes and Consequences of Legislation Qualifying this Principle.

GENTLEMEN OF THE AMERICAN BAR ASSOCIATION:

The subject I have been invited to discuss this evening, regarded solely from a professional standpoint, does not present serious difficulty. That indemnity is the very essence of the contract of insurance, will not be controverted by any intelligent lawyer. This was a fundamental principle of the civil law, has been embodied in the common law, and is to be found either in statutes, or in the decisions of the appellate courts of all the States of the American Union, and of the supreme court of the United States. But now, for causes which may be readily discovered, there seems to be a tendency on the part of legislative bodies, as to one subject matter of insurance at least, utterly to destroy the recognized contract, and by arbitrary rule to substitute another, which cannot be legitimately termed a contract of insurance, for whatever it may be, it certainly is not that! Possibly, modern legislative wisdom has evolved a panacea for all the ills to which the assured has heretofore fallen a prey, in the "Valued Policy Law"; but it would be well to advance with caution, lest "we fly to others that we know not of."

I have condensed the views to be presented in as small

compass as possible, and for purposes of convenient consideration, have analyzed the subject as follows:

1st. The contract of insurance defined to be one of indemnity.

2d. The discussion of the doctrine of *wager*, as applied to the contract of insurance.

3d. The consideration of the question from a legislative standpoint.

1st. The contract of insurance was born of maritime commerce, but the diversified fields of modern industry, the various interests which have resulted from the requirements of a complex and continually extending civilization, and the constant effort to employ to advantage surplus capital, have embraced within it almost every species of property which is subject to hazards against which it is impossible to provide. Thus, we have insurance against fire, lightning, hail, accidents, insurance against boiler explosions, insurance of live stock, plate glass, etc. Life insurance has been purposely omitted from the preceding enumeration, because it is founded upon principles which are, in material respects, different from those upon which are based the insurances to which reference is made. The premium annually charged on a life policy is calculated upon the assumption that the contract will be continued until death ensues, and at such a rate that the insurer will then have in hand, from payments and accretions, a sum sufficient to meet the amount due. Whilst the percentage of lapsed and forfeited policies may be considered, yet it is not the material element which fixes the rate. The actuary is governed in his calculations by the fact that the amount called for on the face of the policy must be paid at a given time, the date of maturity being fixed by the average expectancy of human life. Whilst, therefore, the insured is governed by a

wise forethought in providing against the contingency of sudden and unexpected death, yet the insurer bases his contract upon what approximates to mathematical certainty. Ordinary life insurance is, in the nature of an investment, realization upon which may be precipitated by the contingency of early death—the earlier the death, the more profitable the investment. If life be extended beyond the expectation worked out in the tables of the actuary, the investment results in financial loss. Not so with the contract insuring property! This is generally made for the period of one year, and the rate of premium charged is not based upon the certainty that the contingency will happen within the time fixed, nor does the insurer obligate himself to continue the contract from year to year until the policy shall mature.

It should here be observed that in most of the States of Europe, life insurance contracts were for a long period prohibited by positive law, and treatises have been written to show their legality. Based as they now are upon the considerations which I have attempted to give, I cannot perceive that they are permeated in any way with the taint of wager.

I have said this much at the outset to disembarrass the discussion of the position that as lives are insured at arbitrary sums, having no relation whatever to indemnity, so may property. A life insurance policy, based upon the above principles, possesses no element of a wager contract, whilst, as I shall hereafter attempt to demonstrate, the insurance of property, which departs from the principle of indemnity, is necessarily permeated with this vicious quality.

The Guidon de la Mer, defines insurance to be:

"A contract by which one promises *indemnity* for things transported by sea, deducting a price agreed upon between the assured who makes, or causes to be made, the transport, and the insurer who takes upon himself the risk and burdens himself with the event."

Emerigon, page 2, quotes this definition with approval, and says that it is "the doctrine of all our authors," citing Grotius, Kuricke, Loccenius, Roccus, Straccha, Lessius, Corvinus, Wolff, Marquardus, and Stypmannus.

After showing that wager contracts were formerly permitted at Florence, Naples, and Marseilles, the distinguished author proceeds:

"Why is it that the fortune of ships is not more generally allowed to be embraced by them? The reason is, that navigation has been viewed as a matter interesting the State: *ad summam rempublicam navium exercitio pertinet.* It is not to be borne, therefore, that one should place himself in a situation to desire the loss of a vessel. The greediness of gain is capable of producing crimes which it is desirable to prevent. Hence the cause that, in most commercial places, wager insurances have been prohibited. They were so by the Réglement of Amsterdam; also at Geneva; Blackstone mentions a statute of George II, prohibiting them in England; and finally, they are forbidden by the Ordonnances de la Marine."

Again, page 13:

"It is plain, therefore, that insurance is not a source of gain to the assured. The very nature of the contract forbids that it should be so. The Guidon asserts it as a maxim, that the assured cannot reap advantage from the loss of others. Jean Pierre Ricard remarks, that insurances having been invented and introduced for the purpose of relieving merchants in case of loss, it would be acting very unjustly for them to desire to enrich themselves, or to profit at the expense of the insurers. So the Ordonnance prohibits the causing to be insured, *profits expected* upon merchandise, *freight and wages to be earned* and *goods beyond their true value.* In a word, one may have insured only what one runs a risk of losing, and by no means advantages which one may fail to realize, for assurance

is not for the assured a title to gain. *It may not have any other object than that of protecting him from loss; that is to say, from real intrinsic loss, flowing directly from the subject matter. Damnum quod re vera inducitur. All contracts varying from this principle are void and to be rejected.*"

To the same effect will be found the definitions of Marshall, May, Wood, and of all other writers on insurance law, and of all courts in decisions. When the principle of *indemnity* is tampered with by legislatures or courts, the very vitals of the insurance contract are in danger. And whilst I yield to no one in the alacrity with which I give adherence to new principles of law, which have been born of the progress of this remarkable age, and which have become necessary for the adjustment and readjustment of its complicated machinery, yet I tremble when I discern a tendency to pull down this principle of *indemnity*, which is as impregnable in the forum of reason as it is venerable in practice; which has preserved the contract of insurance—possibly from the remote period of the Roman Empire—to the present day, and to substitute therefor in "the valued policy law," what I can but regard as the first step towards the authorization of a class of wager contracts which have always been heretofore regarded by the courts as absolutely void. This law may be the basis of a system which is to take the place of insurance—for it is not insurance—and which will be more in accord with that spirit of the age, which, while it demands, on the one hand, the most stringent limitations upon all corporate growth and power, yet, on the other, permits to the individual liberty without limit in every department of trade; but its early grave will be found in the gambling and incendiarism which will inevitably result.

2d. This leads to the second branch of the argument which I am endeavoring to present, to wit: the doctrine of wager as applied to the insurance contract.

I shall discuss under this head the valued policy contract as used from an early period in the history of insurance. It is true that formerly a value was generally attached to the property covered, but this did not then constitute what is now understood by "a valued policy," because the insurer was permitted to reduce such estimate by evidence. If property was insured generally, no value being named, the burden was upon the assured to establish by competent evidence the real amount of his loss. If a value was named in the policy, it was held to be *prima facie* correct, subject to be modified by competent testimony.* Gradually, by legislation and the decisions of courts, the force and effect was given to this form of policy which is now understood to attach to the "valued policy" proper; that is to say, in the absence of fraud, gross overvaluation, etc., the amount named was conclusive. So soon as this principle was firmly established, the valued policy became the exception, and not the rule, for insurers and insured at once perceived the dangerous tendency of the doctrine. Then came into general use what is now known as "the open policy," which, when exact justice is attained, can never afford more than indemnity. Doubtless there have always been, and still are, exceptional cases where the valued policy will serve a good purpose, and can be resorted to without serious danger to the principle of indemnity, and when entered into by consent of the contracting parties, and not under the lash of a statute, should be strictly enforced.

But the valued policy law, which has been before the legislatures of so many States of the American Union, makes, or attempts to make, the exception the rule—the abnormal, the normal.

It must be constantly borne in mind that while contracts ordinarily are made for the purpose of acquiring—of increasing—the contract of insurance, as heretofore used, was the

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* A bill to this effect, I observe, has been recently presented to the Legislature of California.

offspring of a wise forethought, which attempted to guard against loss—to prevent decrease. Whenever it is embraced as a means of *acquiring*, it can no longer be termed insurance, unless upon the principle of *lucus a non lucendo*. Every dollar which is at risk beyond the market value of the property covered, is nothing more nor less than a dollar bet on the happening of a given contingency. So far as that dollar is concerned, there is no appreciable difference between it and a dollar staked on a game of cards, a horse race, or a prize fight. Though, as I shall hereafter attempt to show, the dollar bet on whether certain property will be destroyed by fire or not, within a given time, is surcharged with far greater evil and demoralizing tendencies than the dollar bet on what is known ordinarily as gaming. This surplus over the real market value would constitute a wager contract in countries where insurance by form of wager is permitted, but the contract ceases so far to be insurance. Emerigon, 210.

"We prohibit," says the Ordonnance, "the insuring or reinsuring effects beyond their value by one or several policies, on pain of nullity of the insurance, and of confiscation of the goods." "If the assured has concealed insurances, or contracts of maritime loan, and these with those he has declared, shall exceed the value of the effects insured, he shall be deprived of the effect of the insurances, and shall be bound to pay the sum borrowed, notwithstanding the loss or capture of the vessel." "And if he pursues the payment of *sums insured beyond the value of the goods*, he shall be, in addition, exemplarily punished."

As already stated, in the early history of the insurance contract, where a value was attached on the face of the policy to the property covered, it was *prima facie* binding on both parties, but the insurer was permitted to show to the contrary. Thus the element of wager was avoided. It is unnecessary to enter upon the question as to whether this was

permitted only in case of fraud, because the settled rule seems to have been as stated by Emerigon, to wit:

"The Ordonnance says, 'saving to the insurer in case of fraud, the right to insist on a new valuation;' but it is known there are two sorts of fraud, the one personal, which is *dol* properly so called, *dolus malus;* the other existing in the subject, without any person being guilty of wrong, *dolus in re ipsa.* The words 'in case of fraud,' must apply to all cases where there is personal *dol* or *dolus re ipsa,* and are interpreted according to the common law, which, considering the valuation contained in the policy as the title and certified intention of the assured, leaves to the insurer the liberty of destroying this by opposing evidence. Such is the general doctrine. It would be then an abuse of the text of the Ordonnance, and of the mode of expression adopted by some authors, to maintain that it is necessary in this case that the assured should be guilty of fraud and of *dol,* properly so called; for from the moment the assured desires to turn a loss to advantage, and to receive more than he had placed at risk, the good faith he might have possessed in the beginning is changed into veritable fraud."

Marshall, on page 290, *et seq.*, lays down substantially the same principle:

"The value in the policy, however, ought only to be considered as *prima facie* evidence of the amount of the interest of the insured; for though this value is admitted by the insurer, yet, as he admits it upon the mere representation of the insured, if he afterwards find that this was fallacious, that it was fictitious, and only a cover for a wager, it cannot be supposed that he is so far concluded by his admission as not to be at liberty to dispute the value, and show by evidence that it was a mere evasion of the act." * * * "Where a valued policy is *bona fide* meant as an indemnity, the courts

will not inquire very minutely whether the valuation be very near the true interest of the insured. A small excess ought not to be regarded. Considering the uncertainty of every valuation, a scrupulous exactness on this point would only occasion endless litigation. But, on the other hand, *if the interest proved be a mere cover for a wager, every court must pronounce the policy to be void, within the meaning of the Statute.*"

Lord Mansfield, in Lewis *v.* Rucker, 2d Bur., 1171, cited by Hughes on page 45, says:

"The only effect of valuation is fixing the amount of the prime cost, just as if the parties admitted it at the trial; but in every argument, and for every other purpose, it must be taken that the value was fixed in such a manner as that the insured meant only to have an indemnity."

Mr. May says, page 81, in reference to wager policies:

"The courts, nearly without exception, hold such policies void; not only because in contravention of the fundamental object of the contract of insurance, since where there is no interest there can be no loss, and where there is no loss there can be no indemnity; but because when the insured has nothing to lose, but everything to gain by the happening of the event insured against, it would be dangerous and demoralizing to subject the insured to so great a temptation to destroy the property or the life upon which the insurance is effected. A sound public policy will not sanction any such temptation. And, indeed, the nearer the insured is brought by the terms of the contract into such a position that he can in no event be the gainer, the more nearly will the contract conform to the true principles of insurance."

The above extracts from some of the leading writers on insurance, have been embodied in this paper as a convenient

and authoritative method of stating the principles of law which would be deduced from an examination of statutes and decisions. The following propositions may be safely said to be established:

(1) That from the birth of the insurance contract to the present day, the principle of indemnity—not of gain—has been of its very essence.

(2) That without this controlling feature, it would have met an early death at the hands of legislative bodies or courts, as coming within that large class of contracts so prolific of evil, known as wagers, against which all the machinery of government has been brought to bear.

(3) That "the valued policy" originally did not preclude an inquiry into the correctness of the estimate attached to the property, at the instance of the insurer. Such value was only *prima facie* binding.

(4) That the "valued policy," as more recently used, was an exceptional form of contract, which must itself have been entered into solely for the purpose of indemnity, but which permitted a margin of possible, but not anticipated, profit to the assured, provided he acted in good faith in the first instance, and with no view to any benefit other than protection.

In England valued policies are rarely used except in marine insurance. "Valued fire policies," says Porter, page 212, "are practically unknown."

In this country, the settled rule as to valued policies seems to be, that in case of the total loss of the property covered, the insurer is obligated to pay the amount called for by the policy, unless the overvaluation is so great as to suggest that protection was not the sole object of the contract; for if made with a view to profit, it would have been procured by fraud.

The insured must recover, in case of total loss, the face of the policy or nothing; if the overvaluation is not so great as to suggest fraud, he recovers the amount named; if there was fraud he can recover nothing, for the policy is void. But whether the contract of insurance be in the form of an open or of a valued policy, in either event, under all the authorities, ancient and modern, indemnity is the central idea; and though in exceptional cases, the insured may be allowed more than his actual loss as might be established by the market value, yet there has generally been some circumstance which warranted the exception.

3d. At the very threshold of the third division of the discussion, I am met by the advocates of valued policy legislation with a demurrer; for, admitting every position taken to be substantially sound, they reply that long experience leads the insuring public to demand—not an abandonment of the principle of indemnity—but a radical innovation in its practical application. So far as insurance on buildings is concerned, they insist that what will be "indemnity" in case of total destruction, shall be fixed before the loss, not after. Especially do they urge this, not only to prevent the disastrous results of overinsurance, but also to make the value upon which premium is collected the same as that upon which loss is paid. At first glance this seems reasonable and just, but careful consideration will demonstrate that, as a general rule of action, it is entirely impracticable without the emasculation of the principle that the insured *shall never gain by his loss.* Theoretically, the proposed innovation would seem logical, but when applied to actual business it will be readily ascertained that it will destroy the possibility of that very *indemnity* which it proposes to secure, because the insurers will necessarily be compelled to leave a large margin uncovered, and the resulting loss to the innocent and honest will be out of all proportion to the slight benefit which is anticipated. The missing link in the logic which demands the

change is, that what may be *indemnity* to-day, may not be *to-morrow*—possibly will not be *a year hence*, and probably will not be *five years in the future*. So many elements, all of them subject to that change which time is incessantly working, must be combined to ascertain value, that human foresight is entirely too limited in its reach to put a just estimate even upon buildings, at any given time in the future.

But this legislative tendency does not pause with extending the innovation to buildings only! It evinces a decided inclination to embrace all property which may be specifically insured, and occasionally bestows a suggestive glance upon stocks of goods, etc., which are changing daily, both in specifics and value.

What has given birth to this extreme legislative tendency? Why does it seem to be impossible to convince the reasons of honest, intelligent, and reflecting men on this subject by arguments which are simply overwhelming? Deduction and induction, cold logic and bitter experience, have been brought to bear with signal ability, but, in certain States, all to no purpose! As a lawyer representing many of the companies doing business in the South, I have followed the discussion of this question, as published in the insurance periodicals, and I must say that the masterly presentation of the argument against valued policy laws, has been my admiration, and is now my despair, for it leaves me but little to say, without trespassing upon a field already occupied. I have therefore attempted to consider the important questions involved from a professional point of view. Upon this branch of the discussion, however, to wit: the consideration of the matter from a legislative standpoint, it will be necessary for me briefly to touch upon ground already covered by writers much better equipped for the work than I can ever hope to be.

I shall treat this division of my subject as follows:

(1) The causes which have led to the valued policy legislation.

(2) Such legislation is opposed to what has been considered to be public policy.

(3) The flagrant injustice which will necessarily result to insurance companies endeavoring to carry on a legitimate business.

(4) The evils which will result to the general public.

(1.) A distinguished citizen of the State to which I have the honor to belong, General Robert Toombs, once said, in discussing the exemption from taxation which had been granted to certain railroad companies in the early history of Georgia, that if he could be incorporated, he would be supremely happy, because he would then become a favored child of the Commonwealth, enjoying all of the blessings of good government, whilst he would be relieved of all its burdens. In this observation, he believed that he was addressing the prevailing public sentiment, and he was correct. Such a sentiment would not have been generally entertained, without a cause. Where was the cause? In this country, there have been constantly at work, on parallel lines, for many years, two opposing forces. On the one hand, the arbitrary power of accumulated capital; on the other, the ever increasing force of a free people, daily becoming more intelligent, and more determined to reserve to themselves every right and power to which they are entitled by virtue of the institutions under which they live. The energy and friction of the irrepressible conflict occasionally begets extreme and unwarrantable action from first the one, and then the other. Capital is grasping! As was observed by Senator Sprague of Rhode Island (I quote from memory): "There is but one influence more grasping, unyielding, and cruel than one million of dollars, and that is two millions," and whilst the remark is extreme, still, it again presents the general sentiment.

The growth of the jurisdiction of the United States Courts, which has been constant from the close of the late war to the Act of Congress of March 3d, 1887, has been regarded by the great mass of the people, as the strengthening and enlarging of tribunals especially designed for the protection of capital in its onward march to arbitrary power. Concentrated capital comes in direct contact with the masses principally through corporations, and corporations can only act through subordinate agents. In the transaction of the business of banks, of railroads and insurance companies, the number of these agents, from the president to the office boy, is very great, and no matter what care may be exercised in their selection, many are not adapted to the positions they are expected to fill. It is a noticeable fact, that but few men can withstand the insidious operation of that feeling of power which results from the representation of hundreds of thousands, and millions of dollars. Even public office, which in this country is dependent upon the will of the people, has often the effect of making the humble arrogant. This idea has been embodied by the great dramatic writer in the soliloquy of Hamlet, as the "insolence of office." How much more so private office, which is dependent upon the will of one or more employers! One officer or agent in a community, where possibly a hundred are employed, who evinces in any way the "insolence of office," will often prejudice the entire voting population against, not only his own company, but the entire class of business with which he is connected, and, in a measure, against all corporations. Where is the man of comfortable or straitened circumstances, of moderate or humble position, who has not been made to feel this oppression? Of course, the same may be said of representatives of partnerships or of individuals, but the ill effects produced in those cases are modified or destroyed by the personal force of the principal or principals; whilst the officer of a corporation has a principal, yet it is, to the ordinary public, only an abstraction which alone has a personality in an agent.

It will be further observed that the prejudice against corporations generally, and insurance companies in particular, exists principally in small cities and towns, and in the rural districts. The business of insurance in such sections, *where it produces friction*, is, as a general rule, transacted by strangers to the people. Whilst the soliciting agent, on the one hand, is usually selected with a view to his personal popularity, and the confidence the community has in him, and his compensation made dependent upon the amount of business he obtains; the adjuster, on the other, is a stranger to the assured, and his salary or per diem may, in some instances, be affected in the proportion that he secures salvage. I do not mean to intimate that the compensation of adjusters is regularly, or even generally, fixed by the amount of salvage they make; but that one who effects close settlements is always in demand with some companies, and can, within certain limitations, name his own per diem or salary.

"One swallow does not make a summer," but one overreaching, or domineering adjuster, will arouse the indignation of an entire State. These gentlemen are, as a rule, just and liberal, respectful and urbane; but occasionally, I have observed one who would provoke the wrath of Job, and the presence of this one would prove sufficient to induce all the hostile legislation which I am discussing.

It is useless to reply that this result is unjust and oppressive to the companies! The fact remains, and is incontrovertible. Imperative instructions from the principals to be fair and liberal, the small percentage of contested claims, etc., constitute no satisfactory response. The public may be unreasonable, but as legislation depends at last upon the views of the voters, their prejudices must be removed, if possible, though based upon no just or tenable foundation.

Again, whilst those in charge of the interests of the respective corporations at the home offices, may earnestly desire to deal with the assured in a manner which shall be above all criticism, yet the methods adopted in the distribution of labor

and the provision for compensation may have a tendency to prevent this result. The United States and Canada are divided by some of the companies, for the convenience and order of business, into large geographical sections, and over each is placed a manager or general agent. The incomes of these gentlemen depend upon the terms of the various contracts under which they are engaged. Probably most, if not all, provide compensation by a fixed percentage upon the business done, and upon the net profit made in each territorial division. Some stipulate that the expense of the business shall be defrayed by the officer in charge.

The local agents are selected by the heads of the departments, who are naturally governed by the volume of business which it is supposed the appointees will control. Generally, the adjusters are also selected by the same authorities—and if not by them, they would ordinarily exercise a potent influence in the matter of appointments. The compensation of the local agent is made to depend upon the premiums he collects, usually fifteen per cent. thereof. Now, we will for a moment consider the case of a company which has provided for the compensation of the manager or general agent of one of its departments, by allowing him a percentage on the premiums received, and on the net profits, but requiring that he shall meet the expense of the business out of his income, affording him the privilege of adjusting himself, or of employing such persons as he may deem proper.

Where could there be found a more flagrant departure from that principle of the Lord's prayer, which says: "Lead us not into temptation"? If as has been so often urged, the tendency of the valued policy law is to lead the insured into temptation, how much more so the method of transacting business now being discussed!

The general agent and the local agent are both directly interested in the volume of business done, which depends largely upon the value attached to each risk. The former is also directly interested in cutting down the losses to the *mini-*

mum. The adjuster is indirectly affected by the amount of salvage he makes. Unless manager, local agent, and adjuster occupy a plane so high that they live in an atmosphere far above the temptations to which the average human being is subject, one or the other will occasionally fall, and at each successive fall, public indignation is aroused, and severe legislation demanded. Whilst an excessive loss in one State, by one company, might not seriously curtail the profits to the stockholders on all the business transacted throughout the entire country, yet it might affect most disastrously the income of the general agent in whose territory it occurred. If the companies demanded that the insured shall be kept out of temptation, is it too much for the public to ask that the same principle be applied to the agencies through which they issue their policies and adjust their losses? As a rule, managers and general agents are prone to be liberal, but again there is the inevitable and irrepressible exception, and unfortunately, whether with or without reason, the methods of the latter give shape to public sentiment.

But it will doubtless be said that the rules upon which the companies compensate manager, agent, and adjuster, are identical with those that prevail in other businesses; that the self-interest of the employé is invoked by giving him conditional compensation, in order to secure the most effective work; that the assured should not be regarded as imbecile, but as competent in every way to protect himself, etc. This may be all true in the abstract, but if not considered properly applicable to the insurance business by an unreasonable public, which wields the legislative power, what course would wisdom dictate? Unquestionably, reform in the business methods!

What statesman, or political economist, forty, or even thirty, years ago, foresaw the establishment of the railroad commissions, State and National? Would not the leaders of thought in this country have promptly replied to the proposition, that the law of supply and demand, free competition,

would regulate freights, etc., and protect the people? And yet the commissions, whether wisely or unwisely, have been established by law! Next to railroad companies, in the universality and intimacy of their relations with the public, we have insurance companies, and whilst in the nature of their franchises, they differ in many respects from the former, yet there is analogy sufficient to apprehend that the causes which led to the hostile legislation against the one may invoke it against the other.

Naturally, the question presents itself, how are insurance companies successfully to conduct business except in the methods now pursued by them? Whilst the response may not properly fall within the purview of this paper, I will venture to make one or two suggestions, which result from observation in the settlement and defense of cases brought against them.

First, invest a considerable portion of the large sums now annually expended for adjustments, in active, constant, and rigid inspection of risks, not more with a view to the moral and physical hazard, than to the amounts to be carried. Whenever, without serious detriment, the local agent can adjust and pay a loss, intrust the settlement to him. It is true that the number of disputed claims is insignificant as compared to those paid without question, but one controversy will embitter an entire section, should the assured have the respect and confidence of his neighbors. If to the number of controverted claims are added those in which the settlements have not been perfectly satisfactory, the percentage would be increased. Companies labor under a great delusion when they assume, that because they have taken up the policies of the assured by prompt payment, the settlement is satisfactory. If an attempt, though unsuccessful, has been made to reduce the loss below the amount paid, the assured, in a vast majority of cases, become intensely prejudiced to the entire business. He can never comprehend why, if his friend, the local agent, is qualified to make the contract, he is not also

competent to conclude the settlement. Observation will demonstrate that an overwhelming proportion of the controverted claims result from the inefficiency of local agents, and the beneficial effects of careful work done in their selection and education, will immediately be felt in every department of the business. Companies may not secure such close settlements, but a great stride will have been made towards the conciliation of that spirit of active hostility now manifested by the legislator and the juryman. Let the local agent promptly pay every loss which an ordinarily intelligent person would be competent to fairly estimate, and let no person be appointed local agent who is not ordinarily intelligent.

Again, let the agent or adjuster who determines the amount to be paid, be liberal in estimating values. To most insurable property, two values may be said to attach, the one such as would be placed thereon by the average citizen, the other such as would result from the close calculation of the cost of every element which is included in the property covered. Where is the man who has erected a house within the estimate of the architect? Where is the man who has constructed exactly at the sum named by the contractor? If the premium at the inception of the contract, which enters the treasury of the company, is based upon the value to which allusion is first made, why should not the estimate by which money is taken out of the treasury of the company, be fixed by the same standard? The honest property owner procures insurance from his friend and neighbor, the local agent, to the amount which he has always regarded as the value of his house. A loss ensues, and a stranger, full of figures and fractions and rules, takes the place of the friendly agent for the purposes of adjustment, and he applies an entirely different rule of estimating from that adopted when the premium was paid. No matter that such is the letter of the contract, public sentiment will never sanction its rigid enforcement! Courts may instruct juries in the most imperative manner, but the ver-

dicts rendered always evince that even among men consecrated to the discharge of a public service, the prevailing sentiment overrides even the sanctity of an oath.

Another cause of this hostile legislation is, that the enormous surpluses and reserves held by the successful insurance companies, after payment of large dividends on the original stock, is attributed by the general public, not only to high rates, but more especially to the fact that the settlements of fire losses demonstrate that in a large percentage of cases, the corporations are, day after day, year after year, receiving premiums on values, which, in the case of fire, will be shown to have had no existence. It is useless to respond that the owner knows better than any one the value of his property, and the amount that ought to be carried! If a fire takes place, the adjuster will, much more readily than the owner, put a value thereon. Therefore the conclusion is reached that these corporations are annually storing away, or distributing among the stockholders, money for which they gave no consideration whatever. It is useless to point to the Chicago and Boston fires, to the immense percentage which expenses and losses have consumed of premiums, etc.; the fact remains, that the companies habitually receive premiums based upon valuations, which they will repudiate if fires ensue. "The mischief," says the legislator, "is manifest; where is the remedy?" The valued policy law is the response!

So much for the causes which have led to this hostile legislation! That the evils complained of do not justify the remedy proposed, I will now attempt to show.

(2.) The great curse of the world is too much government! The spirit of our institutions has always been ineradicably opposed to what is known as "paternal government." If man has reached that condition of enlightenment and civilization, which capacitates him for self-government, it may be laid down as a fundamental proposition, that the less the law making power has to do with controlling him in his business

methods, the better. Protect his life, his liberty, and his property, educate him sufficiently for ordinary purposes, strengthen the family ties by the sanction of law, guard his right to participate in the government, and to worship his God as his conscience may dictate, and launch him for weal or for woe! This I believe to be the true theory of our republican institutions, and all legislation which tends to restrict his free action seems to me contrary to public policy.* If a citizen, competent to manage his own business interests, is willing to contract with an insurance company for an open policy upon his property, why should he not be permitted to do so? Why should the advocates of the valued policy compel their fellow-citizens to procure that form of contract, or to remain uninsured? Should not both classes be permitted to contract for open or valued policies, for specific or floating insurance, etc., as their judgment may approve? Insurance companies cannot force their customers to take open policies, any more than the latter can compel them to issue valued policies. There are several ways in which there could be marked improvement in the methods of conducting the insurance business, viewed from my standpoint, but the changes must result from competition and experience—not from arbitrary legislation. If this valued

* "One result of all the new State interference is, that the State is being superseded in vast domains of its proper work. While it is reaching out on one side to fields of socialistic enterprise, interfering in the interests of parties in the industrial organism, assuming knowledge of economic laws which nobody possesses, taking ground as to dogmatic notions of justice which are absurd, and acting because it does not know what to do, it is losing its power to give peace, order, and security. * * * I have examined a great many cases of proposed interference with free contract, and the only alternative to free contract which I can find is 'heads I win, tails you lose,' in favor of one party or the other. * * * Which may we better trust, the play of free social forces or legislative and administrative interference? This question is as pertinent to those who expect to win by interference as for others, for whenever we try to get paternalized we only succeed in getting policed."—Professor W. G. Sumner, in *North Am. Rev.*, August, 1887.

policy law is a step in the direction of paternal government, let us at least be American, and move at once to what is the logical result, namely, "Insurance by the respective State Governments." I could present some plausible arguments in support of such an innovation, had I the time. Experience has demonstrated that every man with property should be insured against the loss resulting from contingencies beyond his control. Why should not a small additional tax be collected in consideration that in case of loss by fire, the public treasury should respond? An honest administration of such a governmental scheme would result in cheap insurance, and would prove a lion in the path of incendiarism and fraudulent claims, because the legislative, judicial, and executive powers would all be brought into full play to punish the criminal and to protect the treasury. The details could be readily worked out, and doubtless much money would be saved to honest taxpayers, who now have to meet, in the shape of increased rates, the loss resulting from frauds successfully perpetrated. But such a scheme would not be in consonance with our institutions, and no legislator of the present day, would propose it. Yet, I maintain that it is but the logical sequence of the principle upon which the valued policy legislation is based!

Closely related to the valued policy laws are the bills prohibiting the removal of cases to the United States Courts, requiring the reincorporation of foreign companies desiring to do business in States, and prohibiting the formation of associations of companies, etc., for the purpose of regulating and maintaining rates. All of these are contrary to the general policy of our system of government. The Constitution of the United States provides that the "judicial power shall extend * * * to controversies between citizens of different States." Congress has declared how this jurisdiction shall be maintained and exercised by the courts. Under these circumstances the Legislature of a State enacts that a foreign corporation, as a result of exercising a right guaranteed to it by the Consti-

tution and laws of the United States, shall forfeit its right to do business in that State. Whether the proposition that a corporation always remains, for jurisdictional purposes, a citizen of the State where chartered, though it may become permanently domiciled in another State, be sound or not, yet it is assuredly contrary to public policy to make the exercise of a constitutional privilege the ground of forfeiture of anything, much less of a license already granted. And such seems the tendency of the recent decision of the Supreme Court of the United States, in Barron *v.* Burnside, 121 U. S., 199, qualifying or limiting what was said in Doyle *v.* Continental Ins. Co., 94 U. S., 535.

We have associations of railroad agents, of locomotive engineers, of knights of labor, of lawyers, of doctors, of bakers, of shoemakers, in fact, of representatives of every class of business, and why exclude insurance agents and underwriters? Surely, in union there is strength, and if the people of a State can unite to exclude every insurance company who will issue any other than a valued policy, the representatives of companies may concentrate into a body for the purpose of maintaining and adjusting rates.

(3.) Where the insurance business is transacted under a valued policy law, one of two results must inevitably follow, either a heavy increase in the rate of premium charged, to which I will refer in conclusion, or great loss to the companies. Of course, as was pointedly remarked by a prominent statesman, who was opposing the increase of the pay of public officers in his State, "if they don't like the whisky they can just pour it back in the jug," in other words, resign—so insurance companies can withdraw from such territory as is oppressed with the incubus of such a law.

But assuming that they did not withdraw, the *first* injustice to which I refer is the compulsion they are under to transact business not contemplated by their charters other than in exceptional cases. "A valued policy is utterly meaningless,

unless it contemplates giving the owner more than the cash value of his property," succinctly says the *Weekly Underwriter*. And to afford more than indemnity was never anticipated in the grant of corporate privileges to insurance companies. If the insured is only to have, in event of loss, the real market value of his property, provided it does not exceed the amount of the policy, he is already fully protected by the contract itself, independent of any law.

Secondly, It involves a radical change in the methods of doing business, because no company can afford to issue valued policies, without a careful appraisal, in advance, of every risk.

Thirdly, It will have been observed by any intelligent lawyer who has devoted much of his time to the defense of cases against fire insurance companies that the only possible way to obtain for them even an appearance of justice, where matters of fact are involved, is in securing by the verdict a reduction in the amount called for by the policy. The representatives of the company—adjuster, agent, and counsel—may be satisfied beyond peradventure that the loss was the result of arson, and yet may have been unable to obtain evidence sufficient to convict. Without testimony which will exclude every reasonable doubt, no matter what may be the charge of the court, a verdict for the defendant cannot be obtained. Cases which clearly indicate arson are, with but few exceptions, accompanied by over-valuations, misrepresentations, etc. By uniting the two defenses, juries, who would never consent to find a verdict based upon arson, may frequently be induced to reduce the loss to the *minimum* which the evidence will justify. Thus thousands of dollars are annually saved in the few cases which are litigated from the grasp of men who there is every reason to suppose burned their own property. Crime is not usually committed by daylight, in the presence of witnesses, and of all violations of the

Penal Codes of the States, none is more difficult to detect than arson. Direct evidence is not to be had, and when circumstantial evidence is relied upon, unless it excludes every other reasonable hypothesis than the guilt of the defendant, conviction is impossible.

Where the valued policy law is of force, this mode of defense is unavailing, because there must be a verdict for the defendant upon the ground of arson, or because the policy is void, or for the insured, finding the full amount.

Fourthly, on account of the depreciation that is constantly resulting from causes too numerous to be enumerated, term policies must be either abandoned, or the property insured far below its real value at the inception of the contract. This will be true, to a less extent, as to annual policies.

(4.) The valued policy law constitutes a Hydra-head of evils to the general public, some of which I will enumerate. The first experiment in this class of legislation was made by the State of Wisconsin, in the year 1874. Ohio and Texas followed in 1879, then the Territory of Idaho, and lastly New Hampshire, in August, 1885. Experience under its operation in Idaho led the Territorial Legislature to repeal the law at its last session. Bills embracing the valued policy feature have been introduced into the Legislatures of nearly all the States of the American Union, and, with the exception of Wisconsin, Ohio, Texas, and New Hampshire, after stubborn debate, have either been defeated or withdrawn. In Minnesota the bill was vetoed by the Governor.

The first deleterious effect of such a law is, either an immense temptation to crime, or the assumption of a large proportion of the risk to be carried by the owner himself. The crime to which this experimental legislation principally leads is, unfortunately, one that involves the innocent in possible ruin, while it enables the guilty to perpetrate successful robbery. This disastrous result, by a large increase of ex-

pense, and by forcing the insured to carry a considerable portion of the risk, may be avoided, but in case of fire, again at the cost of the innocent.

Again, the increased expense will inevitably result in an increased rate of premium. If the valued policy law be confined to buildings, no company could afford to take risks thereon, without having careful appraisement, and this must be charged to the property owner. Thus it operates harshly upon the latter in decreasing the amount of his insurance, while it increases the rate of premium. Experience in Wisconsin and Ohio has demonstrated such to be the fact in the increase of the ratio of loss to risk, and of loss to premium. New Hampshire during the current year, seems to be evincing an unusual facility and capacity for combustion. I shall spare my audience the infliction of insurance tables showing percentages, ratios, etc., but simply state that an examination of them, covering the short period that the experimental law has been in force, will show that rates and losses have both largely increased, whilst the resulting loss to the uninsured has been enormous. As stated heretofore, I see no reason why companies cannot successfully operate under a valued policy law, provided the public is prepared to meet the largely increased expense. "Before the war," to use the current phrase of the day, the young scion of a wealthy American family went abroad to complete the education of which his fond parents had never had the advantage. Upon his return, his mother asked him what, of all he had seen in his travels, he deemed the most desirable? With the enthusiasm of exuberant youth, he replied, "Oh, mother, Paris—Paris, of course." The old lady immediately exclaimed, with a heart full of affection: "I buy 'em for you, my child; I buy 'em right off."

So if the public wish valued policy laws, they are within easy reach, for the Legislatures can enact them, but the people must bear the expense. This expense I consider an absolute waste of money, and with no corresponding benefit. To

enact them in order to repress the evils of over-insurance, does not evince the exercise of that calm wisdom which should characterize legislation, because the same result could be reached by a law that the insured should never recover more than a fractional part of the cash value of his property at the time of the fire. The effect of such an enactment would not leave a greater margin uncovered than will inevitably result from the operation of the valued policy law, when the methods of business of the companies shall have been thoroughly readjusted to meet its requirements.

From the origin of insurance, down to the present day, whether we are indebted for it to the Phœnicians, the Carthaginians, the Greeks, the Romans, the Jews, the Lombards, or the Venetians; whether it belongs to an age more remote or was first known in the Thirteenth Century, *indemnity—compensation for loss sustained*—has been of the very essence of the contract. From the auspicious moment of its birth, the lawfully begotten child of peace, commerce and civilization, it was the principle of indemnity—not of speculative gain—which sent the rich young blood bounding through its veins! If, in its youth, it guarded the white fleets which sailed the Indian, the Pacific and the Atlantic oceans, laden with the wealth and energy of man, as in infancy, it held its protecting ægis over the commerce of the Mediterranean, the Ægæan, and the Euxine seas, it was *indemnity to the assured*—not profit—which was its inspiration! And now in its full maturity, when there is scarcely a city or a hamlet in the civilized world where its beneficent influence is not felt, spare it from that cruel legislative knife which seeks to draw its life blood, and to substitute therefor a poisonous fluid which will inevitably breed crime, disease and destruction!

A PAPER

READ BY

JAMES K. EDSALL.

The Granger Cases and the Police Power.

MR. PRESIDENT AND GENTLEMEN OF THE AMERICAN BAR ASSOCIATION:

The subject assigned me for consideration in this paper is "The Granger Cases and the Police Power." While we all recognize the class of cases referred to as "the Granger cases," it is due to the truth of history that I should say that this designation of those cases is, in fact, a misnomer. This name appears to have received its first public recognition, as applicable to these cases, in the dissenting opinion of a distinguished Justice of the Supreme Court of the United States, when he said: "I dissent from the judgments of the court in the several railroad cases arising in the States of Illinois, Wisconsin, Iowa, and Minnesota, commonly known as the 'Granger cases' and from the reasons on which the judgments are founded:" *Stone* v. *Wisconsin*, 94 U. S. 183. It thus appears that this name was bestowed upon these cases by an unfriendly hand. It is not the title under which the cases are reported, or by which they are designated in the opinion of the court. It "sticks," however, and it has become the title by which this series of cases is generally known on legal nomenclature. This is not the first instance in history when a name, originally applied in derision, has become the badge of an honorable distinction.

Conceding that, as a general rule, names may be regarded as comparatively unimportant, yet when a name purports to be a concentrated statement of historical fact, we have the right to expect that it shall be essentially true, and shall not, at least, misrepresent such fact.

The truth is that the organization named "Patrons of Husbandry," whose subordinate lodges or clubs were called "Granges," and whose members were therefore called "Grangers," had but little, if anything, to do with the enactment of the laws asserting the right of the State to exercise legislative control over public warehouses and railroads, which gave rise to the so-called "Granger cases." These laws were not in any sense either inspired by, or the product of any such organization. On the contrary they were the result of the intelligent conviction of thoughtful minds representing the great mass of the people, regardless of any special calling or party affiliation. Speaking of Illinois, this general public sentiment found expression in the Constitution of 1870, and was supplemented and carried into effect by the enactment of laws in 1871 and 1873, assuming legislative control of railroads and warehouses, in respect to their rates of charge. No political organization known as "Grangers" had a representative in the Constitutional Convention or General Assembly of Illinois in either of those years.

These laws were not Granger laws, nor were the cases decided in the highest courts of the State and of the United States, sustaining their validity, in any proper sense "Granger cases."

I may dismiss this digression from the line of remarks proposed to be made in this paper, by adding that the only political success ever accomplished by the so-called "Granger" organization in Illinois was in the year 1877, when, being merged in an "Independent Party," which had less than a dozen votes in both branches of the legislature, it happened that the two great political parties were so nearly equally divided, that these votes held the "balance of power,"

and this they so deftly used as to compel a majority of the General Assembly of that State to come to the Supreme Court of the United States, and, regardless of *habeas corpus*, or anything else guaranteed by Magna Charta or the Bill of Rights, take one of its weightiest members and transfer him to the chamber of the United States Senate.

The series of cases specially referred to as "Granger cases," comprise *Munn* v. *Illinois; Chicago, Burlington & Quincy R. R. Co.* v. *Iowa; Peik* v. *Chicago & N. W. Railway Co.; Chicago, Milwaukee & St. Paul R. R. Co.* v. *Ackley; Winona & St. Peter R. R. Co.* v. *Blake,* and *Stone* v. *Wisconsin,* reported in 94 U. S., pp. 113 to 187.

The leading or principal opinion of the court was delivered in the case of *Munn* v. *Illinois.* The judgment of the Supreme Court of the United States in these cases may, without exaggeration, be said to form an epoch in the judicial exposition of constitutional law in this country.

These decisions, made in 1876, find their antithesis in the Dartmouth College Case (4 Wheat. 518), decided in the same court in 1819.

These later cases do not overrule the Dartmouth College Case, but they re-assert fundamental legal principles which, though forming a part of the law, had for a long time remained comparatively dormant; and which, when invoked and given their due application, have the effect to limit, qualify and restrain within reasonable bonds, the operation of the principle assumed to have been settled by the Dartmouth College Case.

The leading case of *Munn* v. *Illinois* arose in this wise. The General Assembly of Illinois, in 1871, passed an act which, among other things, prescribed maximum rates for the storage of grain in a certain class of warehouses, commonly called elevators, and required warehousemen to obtain license therefor, and prescribed penalties for engaging in that business without such license, or for charging greater rates than those allowed by law. Messrs. Munn & Scott were prosecuted in

the proper State court for a violation of this act, and were convicted and fined therefor. The case was taken on writ of error to the Supreme Court of Illinois and the judgment of the trial court was there affirmed. From this judgment a writ of error was prosecuted to the Supreme Court of the United States, upon which were urged, as grounds for reversal, the following federal questions:

1. That this act, prescribing such maximum rates for storage, was repugnant to that part of § 8, Art. 1, of the Constitution, which confers upon Congress the power "to regulate commerce with foreign nations and among the several States."

2. That it was repugnant to the clause of § 9 of the same article, which provides that "no preference shall be given to the ports of one State over those of another," and

3. That the act was repugnant to that portion of the 14th amendment which ordains that no State shall "deprive any person of life, liberty or property without due process of law."

Neither point of objection was sustained, but the latter seemed to be the one chiefly relied upon, and formed the most difficult and interesting subject for consideration and decision by the court.

On the part of the warehousemen it was insisted that their business of storing grain for hire was simply a private business; that their warehouses were private property; that they exercised no franchise or special privilege conferred by the State, and that they had the right to charge such price for their services and the use of their warehouses as they saw fit, or could agree upon with their customers who chose to do business with them. It was urged that if the power existed in the State to prescribe by law maximum rates of storage, such power might be so excercised as to practically destroy the profitable use of their property, which would in effect deprive them of such property without due process of law.

It was an admitted fact in the case, that the particular

warehouse in question had been built at great expense several years before the adoption of the State Constitution in 1870, and the passage of the Act of 1871; and it was not disputed that the structures built for grain warehouses or elevators were of such character that the same could not be profitably used for any other purpose. On the part of the warehousemen, it was insisted that their business and vocation was a private business in the same sense as is that of the farmer, merchant, or mechanic, and that the State had no more power to prescribe the maximum price that might be charged for the services or use of the property of such warehousemen, than it had in the case of either of the other vocations mentioned.

On the part of the State it was insisted that warehousemen, for the storage of grain in the manner the business was conducted at Chicago, were engaged in a public employment as distinguished from ordinary business pursuits; and that in this regard they occupy a position similar to that of common carriers, who are held to "exercise a sort of public office," and have public duties to perform. It was shown that such warehousemen, like common carriers, were required by law to receive grain from all persons and store the same upon equal terms and conditions. It was conceded that Chicago was one of the greatest grain markets in the world; that a large portion of the cereal products of the States and Territories, west and northwest of that city, were shipped to that market and forwarded from thence to the consumers south and east; that in the ordinary course of business it was impracticable for the producer or shipper to avail himself of that market without having his grain stored in these warehouses. It appeared that there were then in Chicago fourteen of such warehouses, each having a storage capacity of from 300,000 to 1,000,000 bushels; that the same were owned by nine business firms composed of about thirty persons; and it appeared by stipulation that the prices charged and received for storage were such as had "been from year to year agreed

upon and established by the different elevators and warehouses in the city of Chicago, and which rates were annually published in one or more newspapers printed in said city, in the month of January in each year, as the established rates for the year next ensuing such publication."

Referring to these admitted facts and other concessions of a like nature contained in the briefs of counsel for the warehousemen, the court say:

"Thus it is apparent that all the elevating facilities through which those vast productions of 'seven or eight States of the West' must pass on the way 'to four or five States on the sea shore,' may be a virtual monopoly. Under such circumstances it is difficult to see why, if the common carrier, or the miller, or the ferryman, or the inn-keeper, or the wharfinger, or the baker, or the cartman, or the hackney-coachman, pursues a public employment and exercises 'a sort of public office,' these plaintiffs in error do not. They stand, to use the language of their counsel, in the very 'gateway of commerce' and take toll from all who pass. Their business most certainly 'tends to a common charge, and is become a thing of public interest and use.' Every bushel of grain for its passage 'pays a toll which is a common charge,' and therefore, according to Lord Hale, every such warehouseman ought to be under public regulation, viz., 'that he take but a reasonable toll.' Certainly, if any business can be clothed 'with a public interest, and cease to be *juris privati* only,' this has been." *Munn* v. *Illinois*, 94 U. S. 132.

We have stated somewhat at length this finding of facts, so to speak, made by the court in its opinion, as to whether the business and vocation of these warehousemen was *juris privati* only, or *juris publici*, because upon that point hinges the question as to whether the right of governmental control recognized in the common law authorities as properly applicable to the latter, was rightfully applied in this case.

The court in the opinion make liberal citations from Sir Mathew Hale's Treatises, *De Portibus Maris* and *De Jure*

Maris, as published in Hargraves' Law Tracts, which abundantly support the position that if the property is devoted by its owner to a public use, in the proper sense of those terms, the price he may charge for the use thereof, or for his services in connection therewith, may be regulated by law; and that it is a proper exercise of governmental power to prescribe by law maximum rates of charges therefor. It is shown that the principles thus laid down by Sir Mathew Hale have received repeated and frequent recognition and approval in the English courts, in which laws prescribing the rates of charges for ferrymen, warehousemen, common carriers, and others pursuing public employments of like nature, have been upheld and enforced. And laws based upon the same principle, have existed and been enforced, from an early day, in nearly every State in the Union. The real question was whether the principle upon which those laws rested was not broad enough, when properly applied, to sustain this act of the General Assembly of Illinois.

This general principle is fairly deducible from all the authorities:

Whenever any person pursues a public calling, and sustains such relations to the public that the people must, of necessity, deal with him, and are under a moral duress to submit to his terms, if he is unrestrained by law, then, in order to prevent extortion and an abuse of his position, the price he may charge for his services, or use of his property, may be regulated by law.

The right of government to prescribe the rates of toll for a common ferryman, who may own, not only both banks, but the fee of the bed of the river across which the ferry extends, rests upon this principle. In such case the traveler does not stand upon equal footing with the ferryman to negotiate the terms upon which he shall be ferried across the river. It is true he may retrace his steps and abandon his journey, if he is not willing to submit to the ferryman's terms; or he may go miles out of his course and cross the river at another ferry,

or bridge; but this may be so inconvenient or at such variance with his necessities, as to be impracticable. He is therefore under a moral duress to submit to the ferryman's terms; and the State may in the exercise of its just and rightful authority, intervene to restrain the ferryman from any such abuse of his position.

It may be said that the State may exercise this power in respect to ferrymen, because the keeper of a common ferry exercises a franchise derived from the State. This is true, but there is no magic in the word franchise. Why may the State or sovereign treat the right to maintain a common ferry as a franchise? Why may not the owner of both banks and the bed of a river maintain a common ferry over the same, and collect for his services such compensation as he may see fit to charge, without receiving from the State a grant of authority, or franchise therefor?

This brings us back to the starting point. The right to maintain a common ferry and collect tolls from all who use it, is treated as a franchise and therefore subject to governmental supervision and control, because it is one liable to abuse, to the great detriment of the public, if not subjected to such governmental supervision and control. The right to impose a toll upon all who pass over a common ferry (as all the authorities agree,) becomes a common charge, and thus a matter of public concern, and is therefore subject to governmental control. The right to impose a toll or storage fees, upon all the grain shipped to one of the greatest grain markets in the world, when exercised by nine business firms so situated that they could each year agree in advance between themselves as to the rates they would charge for the ensuing year, thus excluding the possibility of a healthy business competition, and forming a close monopoly of the business, also became a common charge, and a matter of public concern, subject to governmental control.

The right of governmental control in each case rests upon the same principle.

The conclusion of the court upon this branch of the question is expressed in its opinion in these words:

"Looking, then, to the common law, from whence came the right which the Constitution protects, we find that where private property is affected with a public interest, it ceases to be *juris privati* only. This was said by Lord Chief Justice Hale more than two hundred years ago, in his treatise *De Portibus Maris*, 1 Harg. Law Tracts, 78, and has been accepted without objection as an essential element in the law of property ever since. Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use; but so long as he maintains the use, he must submit to the control." *Munn* v. *Illinois*, 94 U. S. 126.

Adverting to the fact that it appeared that the warehouse in question had been built and the business established several years before the State passed the law under consideration, or otherwise asserted its right of legislative control, the court say:

"It matters not in this case, whether these plaintiffs in error had built their warehouses and established their business before the regulations complained of were adopted. What they did was, from the beginning, subject to the power of the body politic to require them to conform to such regulations as might be established by the proper authorities for the common good. If they did not wish to submit themselves to such interference, they should not have clothed the public with an interest in their concerns. The same principle applies to them that does to the proprietor of a hackney carriage, and as to him it has never been supposed that he was exempt from regulating statutes or ordinances because he had

purchased his horses and carriage and established his business before the statute or ordinance was adopted." *Id.* 133.

In other words, the rightful powers of government are never lost or forfeited by mere *non user*. They may lie dormant, to be called into active use whenever abuses may exist to make it necessary, or the exigencies of the times may require; and of this the legislative department of the government is the proper judge.

Another question of great practical importance in the case, is thus stated and disposed of by the court:

"It is insisted, however, that the owner of property is entitled to a reasonable compensation for its use, even though it be clothed with a public interest, *and that what is reasonable is a judicial and not a legislative question.*"

"As has already been shown, the practice has been otherwise. In countries where the common law prevails, it has been customary from time immemorial, for the Legislature to declare what shall be a reasonable compensation under such circumstances, or, perhaps, more properly speaking, to fix a maximum beyond which any charge made would be unreasonable. Undoubtedly, in mere private contracts, relating to matters in which the public has no interest, what is reasonable must be ascertained judicially. But that is because the Legislature has no control over such a contract. So, too, in matters which do affect the public interest, and as to which legislative control may be exercised, if there are no statutory regulations upon the subject, the courts must determine what is reasonable. The controlling fact is the power to regulate at all. If that exists, the right to establish the maximum charge, as one of the means of regulation, is implied. In fact, the common law rule which requires the charge to be reasonable, is itself a regulation as to price. Without it, the owner could make his rates at will, and compel the public to yield to his terms, or forego the use."

"But a mere common law regulation of trade or business may be changed by statute. A person has no property, no

vested interest in any rule of the common law. That is only one of the forms of municipal law, and is no more sacred than any other. Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will, or even at the whim of the Legislature, unless prevented by constitutional limitations. Indeed, the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances. To limit the rate of charge for services rendered in a public employment, or for the use of property in which the public has an interest, is only changing a regulation which existed before. It establishes no new principle in the law, but only gives a new effect to an old one."

"We know that this is a power which may be abused, but that is no argument against its existence. For protection against abuses by Legislatures, the people must resort to the polls, not to the courts." *Id.* 134.

It may be a matter of some interest to the profession to note the manner in which the application of an old principle to new facts, is received, and the process by which it works out its results, in the judicial mind. It is through this process that the law attains its growth and development. The case of *Munn* v. *Illinois* was submitted to the Supreme Court of that State at its September Term, 1872, on printed arguments, and taken under advisement. It will not, I trust, be regarded as an improper betrayal of "court secrets," if I state (upon information derived from three members of the court, after they had retired from that bench) that when the case was first considered in conference it was agreed, with scarcely a dissenting voice, that the act prescribing maximum rates for the storage of grain was unconstitutional and could not be sustained. It is said to have been then remarked by one of the judges (who finally reached the conclusion that the act was free from constitutional objection) that the Legislature might as well prescribe by law the price he should pay his

tailor for his coat, as to pass an act of this kind. It may be difficult to realize it now, but there is no doubt that this was the view then generally prevalent in the professional and judicial mind. I think it is safe to say, that, at that time, four lawyers out of every five, would have taken that view. Fortunately the case was not decided upon these off-hand first impressions. No decision of the case was announced at the time of its first consideration in conference, for the reason that the formal opinion of the court had not been prepared. Soon after this, two of the members of the court, as then organized, retired from the bench, and successors were elected. Thereupon a re-argument was ordered, in order that the case might be formally submitted to the court as then constituted, so that all of its members could, with propriety, participate in its decision. The attorney general of the State, availing himself of this opportunity, filed an argument in support of the validity of the law. Upon this, together with the other arguments on file, the cause was again submitted to the court at the September Term, 1873. In January, 1874, the opinion of the court, written by the venerable Chief Justice Breese, was filed, as reported in 69 Illinois Reports.

This opinion was concurred in by five of the seven justices, composing the court. There is no reason to doubt that if the opinion of the court had been announced at the term the case was first submitted, the result would have been the reverse of what it finally was. It was a case which required the court to resort to first principles, and apply them to the new circumstances and conditions, and new modes adopted in the transaction of this branch of trade. When this is done, we find all the substantial reasons which justify the State in assuming legislative control of ferries, common carriers and like public employments, or which sustain the validity of usury laws, doing service with equal force and vigor in support of this enactment.

The principles thus established in the leading case of *Munn* v. *Illinois*, necessarily governed and controlled the other cases

of this series, decided at the same time, involving the question as to the power of State Legislatures to enact laws prescribing the maximum rates of charges for the transportation of passengers and freight by railroad corporations.

That railway companies are common carriers, and as such exercise a public employment; that they are created to subserve a public purpose, and that they are authorized to construct their lines of road for public use, is so obviously true, and had been so frequently adjudged, that it is difficult to conceive how these positions could be seriously controverted.

It has been the universal practice to authorize railroad corporations to exercise the sovereign power of eminent domain to obtain land for right of way and other necessary purposes. That this power could only be exercised to obtain property for a public use, is a principle of constitutional law so elementary in its character, and so universally conceded, as not to justify discussion or the citation of authority in its support.

The whole line of decisions, both State and Federal, which sustain the validity of municipal bonds, and the right of municipal taxation, to aid in the construction of railroads, can only be vindicated upon the ground that such roads are built to subserve a public use.

The Supreme Court of the United States was most solemnly committed to this doctrine long before the decision of the so-called Granger cases. In the case of *Olcott* v. *Supervisors*, 16 Wall. 678, it was held:

"That railroads, though constructed by private corporations and owned by them, are public highways, has been the doctrine of nearly all the courts ever since such conveniences for passage and transportation have had any existence. Very early the question arose whether a State's right of eminent domain could be exercised by a private corporation created for the purpose of constructing a railroad. Clearly it could not, unless taking land for such a purpose by such an agency

is taking land for public use. The right of eminent domain nowhere justifies taking property for a private use. Yet it is a doctrine universally accepted that a State Legislature may authorize a private corporation to take land for the construction of such a road, making compensation to the owner. What else does this doctrine mean if not that building a railroad, though it be built by a private corporation, is an act done for a public use? And the reason why the use has always been held a public one is that such a road is a highway, whether made by the government itself or by the agency of corporate bodies, or even by individuals, when they obtain their power to construct it from legislative grant." * * * "Whether the use of a railroad is a public or a private one, depends in no measure upon the question who constructed it or who owns it. It has never been considered a matter of any importance that the road was built by the agency of a private corporation. *No matter who is the agent, the function performed is that of the State.* Though the ownership is private, the use is public. So turnpikes, bridges, ferries, and canals, although made by individuals under public grants, or by companies, are regarded as *publici juris.*"

On the other hand, municipal bonds issued in aid of a manufacturing corporation are held to be void, for the reason that the same is a private, and not a public, purpose.

Cole v. *La Grange*, 113 U. S. 1.

Loan Association v. *Topeka*, 20 Wall. 655.

In none of the series of railroad cases decided at the same time as *Munn* v. *Illinois*, did it become necessary for the court to determine whether it was competent for a State Legislature to bind itself and successors by *contract* not to exercise this power of legislative control over its railroads to prevent extortionate charges, in case such abuses should subsequently arise. The court held that if the power to make such a contract existed, it had not been exercised in either of those cases; and that the railroads in question were each

subject to legislative control. These judgments of the Supreme Court of the United States were the result of the most mature deliberation. At the conclusion of the opinion of the court in *Munn* v. *Illinois*, delivered by Mr. CHIEF JUSTICE WAITE, it is said:

"In passing upon this case we have not been unmindful of the vast importance of the questions involved. This, and cases of a kindred character, were argued before us more than a year ago by most eminent counsel, and in a manner worthy of their well-earned reputations. We have kept the cases long under advisement in order that their decision might be the result of our mature deliberation."

And while two of the justices of the court dissented, and two of them appear to continue their dissent upon this class of questions, no disposition has been manifested by the court to retrace its steps, or in any wise qualify the principles upon which those decisions rest, but the same have been reaffirmed and carried forward to their logical results in subsequent cases. *Ruggles* v. *Illinois*, 108 U. S. 526; *Railroad Commission Cases*, 116 U. S. 307.

The State courts have cordially approved and followed the ruling of the United States Supreme Court in this class of cases; and the same have been accepted as sound expositions of the law by the ablest text-writers.

People ex rel. Boston & Albany R. R. Co., 70 N. Y. 570.

Field on Corporations, §§ 43, 44.

The State laws, the validity of which has been thus sustained, rest upon that power inherent in every government, whereby it protects the citizen in his rights, and in so doing undertakes to reconcile apparently conflicting rights, redresses wrongs, punishes offenses, and essays to promote the general welfare.

This inherent sovereign faculty of government has received the conventional name of—

THE POLICE POWER.

The subject assigned me for discussion in this paper embraces a consideration of this sovereign power and some of its incidents.

The following authorities, if they do not define, will show the general nature and scope of that reserved power inherent in every State, termed the police power:

"The police of a State, in a comprehensive sense, embraces its system of internal regulation, by which it is sought not only to preserve the public order and to prevent offenses against the State, but also to establish, for the intercourse of citizen with citizen, those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights and to insure to each the uninterrupted enjoyment of his own so far as reasonably consistent with a like enjoyment of rights by others." Cooley's Const. Lim. 572.

"We think it a settled principle," says Chief Justice Shaw, "growing out of the nature of well ordered society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this commonwealth is held subject to those regulations which are necessary to the common good and general welfare. Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the Legislature, under the governing and controlling power vested in them by the Constitution, may think necessary and expedient. This is very different from the right of eminent domain—the right of government to take and appropriate property whenever the public exigency re-

quires it, which can only be done on condition of providing a reasonable compensation therefor. The power we refer to is rather the police power; the power vested in the Legislature by the Constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and of the subjects of the same. It is much easier to perceive and realize the existence and sources of this power than to mark the boundaries or prescribe limits to its exercise."

Commonwealth v. *Alger*, 7 Cushing, 84.

The late Mr. Justice Walker, in delivering the opinion of the Supreme Court of Illinois, uses this language:

"The power to enact police regulations operates upon all alike. This is a fundamental principle, and lies at the foundation of society itself. It is yielded by each member, when he enters society, for the benefit of all. It is incident to, and a part of government itself, and need not be expressly reserved, when it grants rights or property to individuals or corporate bodies, as they take subservient to this right. Although individual rights may be said to be absolute, they are all subject to be controlled in their enjoyment for the general good. * * * * * The law has imposed all these and many other duties and prohibitions upon individuals for the protection of citizens, their morals and property; and notwithstanding it may appear in some degree to abridge individuals of a portion of their rights, yet we are not aware that their constitutionality has ever been challenged. Their eminent justice and propriety has commended them to the community at large as highly proper. The exercise of the power may be referred to the maxim, *Salus populi suprema est lex*."

O. & M. R. Co. v. *McClelland*, 25 Ill. 144.

The police powers are thus defined by Mr. Chief Justice Taney in the License Cases:

"But what are the police powers of a State? They are nothing more or less than the powers of government inherent in every sovereignty to the extent of its dominions. And whether a State passes a quarantine law, or a law to punish offenses, or to establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same power; that is to say, the power of sovereignty, the power to govern men and things within the limits of its dominion."

License Cases, 5 Howard, 583.

In the opinion of the court in *Munn* v. *Illinois*, *supra*, by Mr. Chief Justice Waite, we find the following:

"From this source [referring to the maxim *sic utere tuo ut alienum non lædas*] come the *police powers*, which, as was said by Mr. Chief Justice Taney, in the *License Cases*, 5 How. 583, 'are nothing more or less than the powers of government inherent in every sovereignty, that is to say, the power to govern men and things.' Under these powers the government regulates the conduct of its citizens one toward another, and the manner in which each shall use his own property, when such regulation becomes necessary for the public good. In their exercise it has been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, inn-keepers, etc., and in so doing to fix a maximum of charge to be made for services rendered, accommodations furnished, and articles sold."

The courts have uniformly traced to this source the power of the State to pass laws of this nature. Thus in the case of *Chosen Freeholders of Hudson Co.* v. *The State*, (4 Zabriskie, 728,) the Supreme Court of New Jersey say:

"The regulation of tolls of bridges and turnpike roads, and the fares of railroads and ferries, is in no just sense a regulation of commerce, and has never been so regarded. *It*

is a part of that general power of police essential to every State, and which could not be with safety, and has not been, surrendered to the general government."

We have cited these authorities at some length, indicating the general scope and nature of the police powers of the State, for the reason that the general rule is that these powers are inalienable, and a State Legislature cannot bind itself by contract not to exercise them.

In the opinion of the Supreme Court of the United States in *Stone* v. *Mississippi*, 101 U. S. 814, after referring to the *Dartmouth College Case*, 4 Wheaton, 518, holding that a charter to a private corporation may contain a contract which cannot be impaired by subsequent legislation, it is said:

"In this connection, however, it is to be kept in mind that it is not the *charter* which is protected, but only any *contract* the charter may contain. If there is no contract, there is nothing in the grant on which the Constitution can act. Consequently the first inquiry in this class of cases always is, whether a contract has in fact been entered into, and if so, what its obligations are."

And after discussing the terms of the charter, which authorized the maintenance of a lottery for the term of twenty-five years for an express pecuniary consideration, the opinion proceeds:

"If the Legislature that granted this charter had the power to bind the people of the State and all succeeding Legislatures to allow the corporation to continue its corporate existence, there is no doubt about the sufficiency of the language employed to effect that object. * * * Whether the alleged contract exists, therefore, or not, depends on the authority of the Legislature to bind the State, and the people of the State, in that way. All agree that the Legislature cannot bargain away the police power of a State."

The court then quote with approbation the following from *Metropolitan Board of Excise* v. *Barrie*, 34 N. Y. 657: "Irrevocable grants of property and franchises may be made if

they do not impair the supreme authority to make laws for the government of the State; but no e gislature can curtail the power of its successors to make such laws as they deem proper in matters of police." And further on (p. 820) the court lay down these general propositions, the soundness of which ought never to be questioned:

"But the power of governing is a trust committed by the people to the government, no part of which can be granted away. * * *

"The contracts which the Constitution protects are those that relate to property rights, not governmental." 101 U. S. 802.

In the case of *Beer Company* v. *Massachusetts*, 97 U. S. 25, it is said:

"But there is another question in the case, which, as it seems to us, is equally decisive. The plaintiff in error was incorporated 'for the purpose of manufacturing malt liquors in all their varieties,' it is true; and the right to manufacture, undoubtedly, as the plaintiff's counsel contends, included the incidental right to dispose of the liquors manufactured. But although this right or capacity was thus granted in the most unqualified form, it cannot be construed as conferring any greater or more sacred right than any citizen had to manufacture malt liquor; nor as exempting the corporation from any control therein to which a citizen would be subject, if the interests of the community should require it. If the public safety or the public morals require the discontinuance of any manufacture or traffic, the hand of the Legislature cannot be stayed from providing for its discontinuance, by any incidental inconvenience which individuals or corporations may suffer. All rights are held subject to the police power of the State. * * * Whatever differences of opinion may exist as to the extent and boundaries of the police power, and however difficult it may be to render a satisfactory definition of it, there seems to be no doubt that it does extend to the protection of the lives, health, and property of the citizens,

and to the preservation of good order and public morals. The Legislature cannot by any contract, divest itself of the power to provide for these objects. They belong emphatically to that class of objects which demand the application of the maxim, '*salus populi suprema lex;*' and they are to be attained and provided for by such appropriate means as the legislative discretion may devise. That discretion can be no more bargained away than the power itself." *Id.*, pp. 32, 33.

In *Boyd* v. *Alabama*, 94 U. S. 645, at the conclusion of the opinion the Court say: "We are not prepared to admit that it is competent for one Legislature, by any contract with an individual, to restrain the power of a subsequent Legislature to legislate for the public welfare, and to that end to suppress any and all practices tending to corrupt the public morals." *Id.*, p. 650.

In the *Delaware Railroad Tax Case*, 18 Wall. 226, while it was held on the principle of *stare decisis*, that a State might enter into a valid contract exempting property from taxation it was assumed as settled law that a State could not make a contract whereby it surrendered its police power, or power of eminent domain. In the opinion of the court, delivered by Justice Field, it is said:

"If the point were not already adjudged, it would admit of grave consideration, whether the Legislature of a State can surrender this power [of taxation], and make its action in this respect binding upon its successors, *any more than it can surrender its police power*, or its right of eminent domain."

In some of the earlier cases in the State courts, wherein the proposition was advanced that the police power of the State could not be granted away by contract, the subject was approached with much hesitation and apparent timidity.

The fact that the final determination of the question, as to whether particular laws impaired the obligation of contracts, devolved upon the Supreme Court of the United States, no doubt had its influence in causing the State courts to proceed with great caution in the enunciation of this principle. So

we find, occasionally, that the earlier declarations of the law upon this subject are hedged about with qualifications, in some respects utterly incompatible with the principle that the police power of the government cannot be granted away by contract. We find these qualifications summed up in a single paragraph in Cooley's Constitutional Limitations, p. 577.

"The limit to the exercise of the police powers in these cases must be this: the regulations must have reference to the comfort, safety, or welfare of society; *they must not be in conflict with any of the provisions of the charter;* and they must not, under pretense of regulation, take from the corporation any of the essential rights and privileges which the charter confers. In short, they must be police regulations in fact, and not amendments of the charter in curtailment of the corporate franchise."

The unqualified statement that the police regulations "must not be in conflict with any of the provisions of the *charter*," is clearly not the law. If the police regulations "must not be in conflict with any of the provisions of the charter," in any instance, what becomes of the doctrine that the power of the State to enact police regulations or laws, cannot be granted away, or restrained by contract? Suppose the charter happens to contain something which in fact is in conflict with a police regulation subsequently enacted; which must give way—this clause of the charter, or the police regulation?

In *Stone* v. *Mississippi*, *supra*, there was a clear and unquestionable conflict between the provisions of the charter, which professed to give the right to maintain the lottery for a term of years, and the police regulation or law, subsequently enacted, which forbade it. The court gave effect to the police regulation, and held that it did not impair any valid contract contained in the charter, for the reason that "the power of governing is a trust committed by the people to the government, *no part of which can be parted with by contract.*"

In cases of this character, the only debatable question which can properly arise is whether the subsequent enactment of a law which comes in conflict with the provisions of the charter, is in reality an exercise of the police powers of the State within the purview of these decisions. (*Butchers' Union Co.* v. *Crescent City Co.*, 111 U. S. 746.) If this point is ruled in the affirmative, the law, although subsequently enacted, must prevail over the provisions of the charter, because there can be no valid contract restraining the State from the exercise of this power. At the time of the preparation of Judge Cooley's work upon Constitutional Limitations from which we have made the above extract, the principles involved had not been directly passed upon in the Supreme Court of the United States. If that learned jurist was writing upon this subject to-day, he would not be compelled merely to say: "It has also been *intimated* in a very able opinion, that the police power of the State could not be alienated, even by express grant. * * * It would *seem*, therefore, to be the prevailing opinion, and based upon sound reason, that the State could not barter away, or in any manner abridge or weaken any of those essential powers which are inherent in all governments, and the existence of which in full vigor is important to the well-being of organized society."

Cooley's Const. Lim., pp. 282–3.

That which at the time this author wrote had been *intimated* to be the law, and upon such authorities as then existed *seemed* to be the prevailing opinion, based upon sound reason, has since been authoritatively declared to be the law by the highest court competent to speak upon the question. As a principle of constitutional law, it is now settled that a State Legislature cannot bind the State by contract not to exercise police powers, so far, at least, as the same may be necessary for the protection of the public safety, public health or public morals. It necessarily follows that such power may be exercised, even though it renders nugatory express

provisions of prior acts of incorporation which come in conflict with the subsequently enacted police regulations.

Under our polity and system of government all grants of corporate franchises are made by the legislative department of the government under the form of legislative enactments. Such acts of incorporation not unfrequently contain provisions which in their essence and nature are mere *laws* and not *contracts*.

To mark and emphasize this fact, as well as distinction, in *Stone* v. *Mississippi*, *supra*, the court found it necessary to say: "In this connection, however, it is to be kept in mind that it is not the *charter* which is protected, but only any *contract* the charter may contain. If there is no contract, there is nothing in the grant on which the Constitution can act. Consequently the first inquiry in this class of cases always is, whether a contract has in fact been entered into, and, if so, what its obligations are."

It is not true, therefore, that every provision contained in a legislative act of incorporation is invested with the force and efficacy of an obligatory contract, and thus brought within the protection of the Federal Constitution.

Such charters or acts of incorporation may, and often do, contain provisions which only have force and effect as laws, and are therefore subject to amendment or repeal.

The practice has been quite common, without accurate discrimination, to designate every charter or act of incorporation a *contract*. This language may have been strictly proper when applied to charters creating corporations granted by the British Crown. The King, acting alone, and without the concurrence of Parliament, possessed no legislative authority. Charters granted by him conferring corporate franchises were valid so far, and so far only, as they constituted contracts. If they contained provisions not properly the subject of contracts, such provisions were void, and conferred no rights. Thus, while the King had power to grant the franchise to maintain a fair or public market, and to authorize the collec-

tion of tolls, yet the tolls so authorized must be reasonable and not excessive, otherwise the grant as to tolls would be void. Lord Coke states the law thus:

"Every one that hath a faire or market, ought to have it by graunt or prescription; if the King graunt to a man a faire or market, and graunt no toll, the patentee shall have no toll, for toll being a matter of private for the benefit of the lord, is not incident to a faire or market so graunted without a special graunt, as it was adjudged in the case of Northampton; for such a faire or market is accounted a free faire or market; and there it was also resolved, that after such a graunt made the King cannot graunt a toll to such a free faire or market without *quid pro quo*, some proportionable benefit to the subject. Lastly, it was there resolved that if the toll graunted with the faire or market bee outragious or unreasonable, the graunt of the toll is void, and that the same is a free market or faire."

Coke's Institutes, Part 2, Vol. 4, p. 220.

Tolls which "bee outragious or unreasonable" are thus defined by the same authority: "*Outragious*. That is either where a reasonable toll is due, and excessive toll is taken, or where no toll at all is due, and yet toll is unjustly usurped, for it is an outrage to doe such a common injury and wrong." *Id.* p. 219.

"Also, if the King, at the time he grants a fair or market, grants a toll, and the same is outrageous and excessive, the grant of the toll is void, and the same becomes a free fair or market."

4 Bacon's Abridgment, p. 158.

"The King cannot appoint a burthensome toll." If the toll specified in the grant or charter is excessive, the grant is void.

Heddy v. *Welhouse*, Cro. Eliz. 558.

Wright v. *Bruister*, 24 E. C. L. 60.

The same principle is recognized and enforced in Sir Matthew Hale's Treatise *De Portibus Maris*, as to tolls or duties

charged for the use of public wharves, etc., quoted in *Munn* v. *Illinois*, 94 U. S. 127, where it is said: "In that case there cannot be taken arbitrary and excessive duties for cranage, wharfage, pesage, etc.; neither can they be enhanced to an immoderate rate; but the duties must be reasonable and moderate, though settled by the King's license or charter."

We find thus firmly fixed in the common law a reasonable and just limit to the power by charter contract to confer the right to collect tolls from the public. The limit is that the tolls granted by contract must be *reasonable*. An attempt thus to grant the right to collect excessive tolls is simply void as a mere contract.

The sturdy English judges and sages of the common law, set up this barrier in behalf of common right, and to protect the people from the greed of monopolists. It was a part of the common law at the time of the adoption of our Constitution, as firmly established as the principles of Magna Charta itself, that an attempt to grant by charter the right to collect excessive tolls was not a contract, but void, and conferred no rights whatever. Is it reasonable to hold that the framers of our Constitution intended to throw the shield of its protection over such pretended contracts, thus condemned as absolutely void?

Neither the State nor the National Constitution should be so construed or administered as to work the destruction of the very governments they were ordained to establish and make perpetual. Under our present Constitution the existence of the State governments, with all their proper powers unimpaired, is essential to the continued existence of the National government. The State governments not only form the basis, but constitute an essential part of the framework of the National government.

It cannot be, therefore, that when the framers of the Constitution of the United States inserted therein the provision that "No State shall * * pass any * * law impairing the obligation of contracts," it was designed or anticipated

that the same would be perverted into an authority to State Legislatures to sell, or bind themselves by contract not to exercise, their legislative or other proper powers of government. The competency of State Legislatures to make particular contracts is wholly unaffected by this provision.

If the undertaking or enactment by a State Legislature, claimed to be a contract, never in fact constituted a valid contract perpetually obligatory upon the State, by reason of want of power to make such a contract, then the same can receive no support or protection from this clause of the Federal Constitution.

And inasmuch as the State Legislature has no power to enter into a contract binding the State not to exercise its sovereign powers of government, no undertaking of this character can properly receive any support or protection from this provision of the Constitution.

We have elsewhere shown, upon authority, that the enactment of laws to prevent extortion and prescribing maximum rates for the transportation of passengers and freight upon railroads is a proper exercise of legislative power. In other words, it is one of the powers of government inhering in each of the States. This being so, the enactment of such laws cannot impair the obligation of any contract, because no valid contract could ever have been made depriving the State of power to enact such laws.

There is an obvious distinction between a *law* and a *contract*. Laws are enacted by or in virtue of sovereign authority. Contracts may be entered into by competent parties not possessing any such authority.

Governments are organized to the end that they may exercise sovereign governmental powers for the protection and well-being of society. The making of contracts is not one of the purposes for which governments are created. At most this is but a mere incident to the sovereign powers of the State. The proper exercise of the sovereign powers of government is the chief end of the existence of every State, and its implied

or incidental power to make contracts should be held subordinate thereto.

By virtue of the former the State enacts laws. Through an exercise of the latter it makes contracts.

It is unreasonable to hold that a State Legislature, by an exercise of this incidental and subordinate power to make contracts in behalf of the State, can divest the State of its principal and sovereign power to enact laws.

In such case, as well as in the case of a natural person, there are certain well understood limitations upon the power to make valid contracts.

A natural person, possessing all the powers of a citizen, cannot by contract confer upon another the right to deprive him of life or limb, or the right to do any act which would unnecessarily endanger either.

Upon the same principle, and for stronger reasons, a State Legislature cannot, by virtue of its authority to represent the State in making contracts in its behalf, enter into a valid contract whereby it would divest the State of its inherent sovereign power to enact laws for the government of those within its jurisdiction. The incidental and subordinate power to make contracts can neither absorb nor destroy the principal and sovereign authority to enact laws. The less cannot include the greater; and it should not be permitted to absorb or destroy the greater.

Vast as the purchasing power of money is, there are, undoubtedly, some things it cannot buy. There are some things possessed by every person, for the sale of which a valid contract cannot be made. There are some things possessed by every State, for the sale of which a valid contract cannot be made. Among these are the police powers of the State.

There is an imperative necessity that these essential powers of government shall be preserved unimpaired. If the State can be shorn of these powers, or bound by contract not to exercise them, then it must fail in the accomplishment of the purpose of its existence. If, through the agency of the

government, the irrepressible conflict now being waged between capital and labor is ever adjusted so that the rights of each shall be protected, and no excuse shall exist for strikes, boycotts, and lock-outs, it will be through the exercise of its police powers. Whether this shall be done through boards of arbitrators, so constituted as to command the general confidence of the parties in interest, or through permanent boards of commissioners, or by some other means, it is not within my province to suggest; but unless we are willing to confess that our government is impotent and incapable of discharging its proper functions, we must insist that its rightful powers are adequate to meet these and all other demands made upon it; and that these powers constitute a trust to be exercised by the representatives of the people, and not a commodity to be sold or bartered away by contract.

REPORT OF THE COMMITTEE ON JURISPRUDENCE AND LAW REFORM CONCERNING A FEDERAL CODE OF PROCEDURE.

To the American Bar Association:

Your COMMITTEE ON JURISPRUDENCE AND LAW REFORM, to whom was referred last year a resolution approving Senate Bill 2110, Forty-ninth Congress, First Session, or any other bill having a similar object (Report of the Association, Vol. IX, pages 75, 81, 551), respectfully submit the following report:

The object of the bill in question is to provide for the preparation of a Federal code of procedure to regulate both civil and criminal proceedings. It is also its design that this code should be so framed as to make it convenient for use in the several States and Territories for their own courts should those governments think fit to adopt it.

The work of preparing this code the bill proposes to intrust primarily to a commission appointed by Congress, but with the invitation to the various States and Territories to appoint each one or more local code commissioners, with whom the Federal commission may confer and advise.

As it is the main object of this bill, and of any others that may be framed for a similar end, which is especially referred to us for consideration, we deem it unnecessary to discuss the particular machinery to be provided for working out the desired result. The great questions are: Is a code of Federal procedure desirable? and, Is such a code now attainable?

In our opinion, both questions may be answered in the affirmative.

Federal procedure, as we all know, is now regulated by the United States constitution and statutes, and rules of court made under the authority of these statutes. Equity suits and admiralty proceedings are governed by one uniform system in every court of the United States; criminal prosecutions are mainly conducted in the same way; while civil actions at common law, or in the nature of those at common law, in most respects follow the local practice of the State in which they may chance to be brought.

This system has obvious advantages and obvious defects.

The lawyer in every state can now enter upon the trial of a common-law cause in the Federal courts, or prepare the necessary statement of the cause of action, or of the defenses to it, with little more special preparation than if he were acting in a similar action in the local tribunals with which he is most familiar. If accustomed to frame his pleadings under a code of civil procedure, he is not liable to be called on to draw a writ in assumpsit or a declaration in covenant; nor need counsel who know only the venerable forms of the processes of common law fear to embark on the freer but less certain courses of code pleading. But if he wishes to bring such a suit in the Circuit Court of the United States for another district, he finds himself absolutely dependent on the assistance of local counsel.

On the other hand, the circuit judge who holds court in four or five states is required to administer four or five different systems of procedure, and to take judicial notice of the statutes of each jurisdiction by which they are regulated.

Meanwhile equitable and admiralty actions, being uniform in their character, proceed in the same way in every state, regardless of any local law or practice. To learn how to bring and to defend them is a matter of special study and years of time. There is a well-recognized division of the bar to which they are conceded to belong. In this way the busi-

ness is probably better done, but there are few to share the fees, and clients probably pay more than if they could employ their ordinary counsel, who attend to their other interests.

But the institution of a code of Federal procedure does not necessarily mean the adoption of one of these systems rather than the other. Were we to pursue both, still, and in precisely the same manner as now, it would be a matter of great convenience to have all existing legislation and rules brought together and published in an orderly and authentic form. A certain statement of what is law is better than an uncertain one. It is easier to consult a single book than a dozen books.

The courts of the United States, as to jurisdiction and procedure, are wholly creatures of positive law. The United States as such has no common law. What, then, is created by statute, is best expressed by the best statute which it is possible to frame, and this will be one that is clear, orderly, and systematic.

It is, however, doubtless true that the advocates of a Federal code of procedure look further than this. They wish it to be based on what is known as the system of code pleading, so far, at least, as the Constitution of the United States may permit. If uniformity in civil procedure alone were sought, the result might be more summarily accomplished by the plan referred by the Association at its last meeting to the Committee on Judicial Administration—that of extending the equity rules so as to embrace all common-law actions, saving only the right to a jury trial.

Whether thus to broaden our equity pleading so as to embrace all controversies, or to merge it in a new mode of procedure, applicable to all civil actions, are questions which come more appropriately under the province of that Committee than of this, and we, therefore, forbear to discuss them here.

In one way or in another we have no doubt that it is practicable to give uniformity to our practice in all ordinary

civil causes. The strong tendency of American legislation is in this direction. Such action has been had to a greater or less extent in most of our States and Territories, both in civil and criminal proceedings; and the narrow field of Federal jurisdiction makes the problem perhaps less difficult there.

Nor would there be any serious difficulty in framing a brief code of criminal procedure. In the reports of the Attorney General of the United States for 1884 and 1885 (Report of 1885, page 16) he has recommended a number of provisions, in amendment of our existing statutes on this subject, which would of themselves, if adopted, constitute no inconsiderable part of such a code, and which are fully in harmony with the spirit of modern jurisprudence. It is all but irrational for this great nation, in prosecuting offenders against its laws, to bind itself by the fetters of common law criminal pleading, which England herself has long since cast off, as no longer necessary for the protection of individual liberty.

Your Committee, therefore, recommend the adoption of the following resolution.

All of which is respectfully submitted.

S. E. BALDWIN,
HENRY HITCHCOCK,
GEO. TUCKER BISPHAM,
JOHN F. DILLON,
T. M. COOLEY.

Resolved, That in the opinion of this Association the preparation of a code or codes of procedure for the United States courts, regulating both civil and criminal proceedings, is both desirable and practicable.

REPORT OF THE COMMITTEE ON JURISPRUDENCE AND LAW REFORM CONCERNING THE PUBLICATION OF STATE REPORTS.

To the American Bar Association:

The COMMITTEE ON JURISPRUDENCE AND LAW REFORM respectfully report that in their opinion the following resolution referred to them by the Association at its last meeting ought to pass:

"*Resolved*, That it is the sense of the Association that all reports should be published by the State Government, and should be offered for sale at cost price."

This only aims to make universal what is now general.

The opinions of our highest courts constitute one of the most important forms of American law. They are the voice of the Government, and it is the proper business of the Government to see that, as thus expressed, it is made public with clearness and certainty. No State expects to make a profit in publishing its statutes, and the decisions of its highest courts, being of equal or greater force, ought, for the same reasons, to be made readily accessible to all whom they affect. The parties to a suit may fairly be called upon to contribute to the expenses of the court, but the decision in their case, when announced, may affect the entire community, and, when it does, ought to be published at the equal cost of all.

The resolution does not profess to determine what ought to be counted as a part of the cost. It is possible that in the smaller States the services of the reporter may be fairly included, but in all those which have a numerous bar and large population, we believe that no expense should be included in the selling price, except those of the printing office and the binder.

All of which is respectfully submitted.

S. E. BALDWIN,
HENRY HITCHCOCK,
JOHN F. DILLON.

REPORT OF THE COMMITTEE ON JURISPRUDENCE AND LAW REFORM ON FEDERAL COURTS OF ARBITRATION.

To the American Bar Association:

The COMMITTEE ON JURISPRUDENCE AND LAW REFORM, to which was referred a project for a bill to establish Courts of Arbitration in connection with the ordinary Federal Courts (Reports of the Association, Vol. IX, page 509), respectfully submit the following report:

In many of our States and Territories there is some statutory procedure under which arbitration may be had, and the award enforced by authority of the courts. In New York city a special Court of Arbitration exists, by virtue of a statute passed for the purpose, for the speedy hearing and adjustment of controversies between merchants. It is, however, we believe, generally found that both suitors and lawyers prefer to trust to the ordinary course of law. It may be less expeditious, but it is more certain, and the opportunities for review, while they may prolong the litigation, often serve to correct what would otherwise do plain injustice.

Any measure which should deprive any one of the right to resort to the ordinary courts would be foreign to the genius of our institutions, but we see no objection to allowing both parties to a controversy, if they agree in desiring to submit it to arbitration, to do so with the assurance that the award will be enforced with all the power of the law.

The bill in question limits the class of controversies to be thus disposed of to such as are within the province of the courts of the United States, and gives the latter power to restrict the operation of the award in the same manner, as well as to exercise an equitable jurisdiction to relieve against fraud, accident, or mistake. The expense is thrown upon the parties, and the only burden cast on the regular judges is the duty

of advising and protecting the arbitrators in the discharge of their duties.

In these days of frequent conflict of interest or opinion between employers and employed cases may arise in which an arbitration, so conducted, might prevent a lockout or terminate a strike. There are powerful organizations of workingmen pledged to the principle of arbitration. The bill proposed would give them an opportunity, at times, to test claims made by or against them which are within the jurisdiction of the courts of the United States. We believe that it is an experiment worth trying, not simply for their benefit, but as an offer to all parties in any controversy of the character necessary to support the jurisdiction of a cheap, speedy, and informal way of bringing it to a final settlement.

We therefore recommend the adoption of the accompanying resolution.

All of which is respectfully submitted.

S. E. BALDWIN,
HENRY HITCHCOCK,
GEO. TUCKER BISPHAM,
JOHN F. DILLON,
T. M. COOLEY,
Committee.

SARATOGA, August 17th, 1887.

Resolved, That in the opinion of this Association the project of a bill for an Act to establish Courts of Arbitration as printed in the Reports of the Association, Vol. IX, page 509, presents a fair and practicable scheme for enlarging the powers of the courts of the United States in respect to arbitration, and is worthy of careful consideration by the Congress of the United States at its next session.

REPORT OF COMMITTEE ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE ON THE SUBJECT OF PENAL COLONIES.

To the American Bar Association:

The question of penal colonies, or transportation for crime, which at the last session was referred to the Committee on Judicial Administration and Remedial Procedure (Report 1886, p. 551), for report, may be said to have settled itself. A brief statement will show the course it has taken and the result to which it has come.

Exile, banishment, or ostracism were practiced by all ancient nations. The Emperor Augustus introduced two new forms of banishment, called *deportatio*, which was perpetual banishment to a fixed place, and *relegatio*, which was also to a certain place, but might be temporary, and was without loss of citizenship. Deportation ranked as capital punishment, because it involved civil death and total forfeiture of the prisoner's property and rights.

Deportation, or transportation, as more familiarly styled in English, has been practiced by modern European States, though not by all. Common as banishment was in France under the Monarchy, deportation was first introduced during the Revolution and inflicted by each of the parties in the Convention successively upon the others. The decree, June 7th, 1793, forming the Revolutionary Tribunal, authorized deportation of all dangerous agitators for whom no specific law or penalty could be found. Vagabonds and mendicants soon abounded to such a degree that they also were included. Eight or ten thousand Frenchmen are supposed to have been consigned to the swamps of French Guiana between the Amazon and Oronoeo.

But as to penal colonies, for the double purpose of punishment and colonization, there have been no examples like those of Botany Bay and Siberia. The latter is as yet com-

paratively unknown, but probably before long will exhibit a wonderful growth of population and power.

In England transportation originated under a Statute of 39 Elizabeth, Ch. 4, for the banishment of rogues and vagabonds dangerous to the common people. It is a theory that in the free air of England there could be neither slavery nor banishment; but Magna Charta, like the Declaration of Independence, was only for freemen, and all things were possible by Act of Parliament. King James I converted the Act 39 Elizabeth to the purpose of transportation by an order in 1619 to the Treasurer and Council of the Virginia Colony, commanding them to send a hundred dissolute persons to Virginia, which the Knight Marshal would deliver to them for the purpose.

Virginia was not the only Colony so visited. The Statutes of Charles II and James II gave the judges who tried the Covenanters and the rebels under Monmouth authority to execute the convicts or transport them to America at their discretion. Gifts of convicts for transportation were made by James II to his favorites, and the trade in them became more profitable than the slave trade. Mr. Bancroft has broadly stated: "The history of our colonization is the history of the crimes of Europe." *History U. S.*, Vol. 2, page 251.

By the time of George I, this discretion of the judge extended to all sorts of felons entitled to benefit of clergy, as well as the rogues and pilferers. Transportation to the American Colonies came into common operation and so continued until the Revolutionary War. Botany Bay was established in December, 1786, as a penal colony and outlet, in place of the American Colonies.

It may be surprising, but the comment of Chief Justice Marshall upon the order of James I for the first transportation of convicts to Virginia was in these terms: "The policy which dictated this measure was soon perceived to be not less wise than humane. Men who in Europe were the pests of the body politic made an acceptable addition to the

stock of labor in the Colony; and in a new world, where the temptations to crime seldom presented themselves, many of them became useful members of society."

But Captain John Smith stated that, after his departure from the Colony, the number of felons and vagabonds transported there brought such evil report upon the place "that some did choose to be hanged ere they would go thither, *and were.*"

Lord Bacon, who was one of the Council under the second Charter of Virginia, and probably familiar with the facts, has been thought by the historian Grahame to have referred to that Colony in his saying: "It is a shameful and unblessed thing to take the scum of the people, and wicked, condemned men, to be the people with whom we plant."

And to this conclusion later history and experience has brought the world. England, under the powerful appeals of Bentham, Bishop Whately, and Sir W. Molesworth, abolished her transportation system in 1853, out of regard to her Colonies.

Penal colonization unquestionably, under former conditions, had its merits, not only as a correctional mode of punishment, but as adding largely to the commercial and agricultural development of new countries.

But the modern agency of steam navigation has destroyed the distance and segregation of the criminal which were possible even sixty years ago, and constituted the strength of this system of punishment. Not only so, but it is shifting the world's population in search of new homes, and in such vast masses that on no part of the habitable globe, perhaps, would a penal colony be practicable for another hundred years.

RUFUS KING,
WALTER B. HILL,
ROBERT D. BENEDICT,
HENRY WISE GARNETT,
Committee.

August 17th, 1887.

REPORT OF COMMITTEE ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE ON UNIFORMITY OF PLEADING AND PRACTICE IN UNITED STATES COURTS.

To the American Bar Association:

THE COMMITTEE ON JUDICIAL ADMINISTRATION AND REMEDIAL PROCEDURE have carefully considered Mr. Bonney's proposition at the last Session of the Association (Report 1886, page 503), that all civil suits in the United States Courts be conducted according to the system of equity pleading and practice as now or hereafter established.

The Association and the Bar generally would probably concur in the views expressed by Mr. Bonney as to the sacrifice of all uniformity of procedure, in cases at law, in the National Courts by the Act of Congress, June 1st, 1872 (Rev. Stats., sec. 914), which adopted the State systems of pleading and practice in such cases, as the rule of the United States Courts. It was intended, no doubt, as a measure of comity to the Bar of the several States, but has failed in the interest of justice, since the Judges of the United States Courts cannot be expected to keep pace with the minute local differences and changes constantly going on with the growth of each of the State systems. In a National system, moreover, where the appellate jurisdiction from so many States and Territories converges in a single central tribunal, the diversity so created must add much to the labors and difficulties which already overburden it, and delay its business to the general injury.

The Committee agree in recommending that the Association favor, by all its influence, the adoption of a uniform procedure in all civil suits, in the United States Court, other than suits in the Admiralty. The practice of the Admiralty is substantially the same throughout the country, and needs no such change as is proposed.

What the form shall be, whether it be possible to make it the same for cases at law and cases in equity, are questions of more difficulty. The further question may also be raised, Why not adopt a Code? To this we would say that in the diversity of the State Codes, each jealously maintained by its votaries to be the best, there would be scarcely a hope of the union which, with some concessions, may be expected upon the well-known system advocated by Mr. Bonney.

The proposition embodied in the form of a short Bill, which he has offered as the formula of his ideas, is that the system shall be that which now prevails on the equity side of the United States Courts, familiar, therefore, to the Bar in every part of the country, and that it shall be applied, it would seem, to both the classes of suits denominated as legal and equitable. His proposition, exactly stated, is that "All civil suits, actions, and proceedings shall be according to the forms of pleading and rules of practice in equity now or hereafter established." A further proviso as to jury cases will be noticed presently.

The Committee cannot concur in the full extent of the proposed bill in these respects; nor do they deem it essential to Mr. Bonney's general plan that the existing forms and rules in equity must be adhered to in all their entirety. We believe that a considerable part may be eliminated with advantage. A single point may be selected, for the present, to illustrate what the Committee conceive to be the objection.

The Committee are not aware whether the bill of discovery continues to be used in practice in all the circuits, nor to what extent in either of them. But it will be obvious what an immense disburdening of the system might be effected if this heavy part of chancery pleading and practice can be removed. The bill (which derives its name from this element) would no longer be encumbered with the involutions and repetitions which a discovery makes necessary, and, with the equally intricate distinctions as to demurrer, plea

and answer, either full or to support the plea, would shrink into a simple pleading and nothing more. To make this clearer, the bill in chancery, it is to be remembered, is really a two-fold instrument—being as a pleading nearly analogous to the declaration in an action at law, and governed by the same rules. It is, in its other aspect, as an examination of the defendant, or a means of supplying the plaintiff with proof to sustain the case in hand or some case at law, that the suit in chancery acquired its notoriety. Special pleading has been innocent compared with the shifts and arts of defense in chancery to avoid discovery.

But if that has passed away—if the modern method of discovery by bringing the defendant on the witness stand like any other witness, as the Statutes of the United States provide may be done in every case in its courts (Rev. Stats., secs. 858, 862), answers all purposes of the old bill of discovery, is there any adequate reason why it should any longer exist? For exceptional cases the State Codes, or some of them, have retained a privilege of annexing, either to the petition or the answer, interrogatories to be answered by the opposite parties —a proceeding so rarely exercised that its precise nature has not yet been settled.

If it be practicable, as the Committee believe, to dispense with the bill of discovery in the equity suit in the United States Courts, the further question remains whether the distinction between cases in law and cases in equity, which is made in the Constitution, can be duly observed if both classes of cases are reduced, as Mr. Bonney proposes, to a single form of action.

The distinction is not so deeply marked in Article III of the Constitution as in the Seventh Amendment, where, as will be remembered, the right of trial by jury is made imperative in common law cases in which the amount or value exceeds $20, and no review or re-examination of the verdict of a jury can be had otherwise than according to the rules of common law. The bill proposed by Mr. Bonney

provides for these requirements by securing an option in all cases where there is a right of trial by jury, to either of the parties, who shall claim it in a certain time and mode.

Whether this comes up to the peremptory terms of the Seventh Amendment may be a question under the proposed bill. There would be an ambiguity as to what cases would entitle a party to the privilege so held out. The criterion is evidently placed by the Seventh Amendment upon "cases at law," and the doubt is whether any other can be interposed in place of it. It might be advisable, therefore, if not indispensable, in adopting the system of equity pleading and practice for all civil suits that, besides the suit in Admiralty, there should be two other forms of action conforming with the distinction between cases at law and cases in equity established in the Constitution. In the State codes of civil procedure this has been accomplished by defining the line between jury and non-jury cases so as to correspond nearly, if not exactly, with the line between cases at law and in equity. In Pennsylvania by a recent statute suitors are limited to two forms of action at law—one for all suits sounding in contract, express or implied, and styled assumpsit; the other for all suits sounding in tort and styled trespass.

The Committee, therefore, without entering further into the considerations which may arise upon Mr. Bonney's proposition, beg leave to report it back with the recommendation that the bill accompanying it be amended so as to provide as follows:

First. All civil suits, actions, and proceedings in the courts of the United States, other than in the Admiralty, shall be according to the forms and rules of pleading and practice in equity as now or hereafter established. Bills of discovery and other pleadings and procedure under that branch of equity jurisdiction are abolished: *Provided*, that parties in any suit may annex interrogatories to their pleadings to be answered by the adverse parties under such rules as shall be

prescribed by the authority hereinafter appointed; and provided also that different forms for cases at law and in equity may be adopted to preserve the right of trial by jury as directed in the Constitution.

Second. That the Supreme Court is authorized and directed to make and publish all orders, rules, and forms necessary and proper for carrying this act into effect on or before the day of in the year ; and the sum of thousand dollars is appropriated from the treasury for the necessary expenses thereof, and to be paid out of the treasury upon the order of the Chief Justice.

RUFUS KING,
ROBERT D. BENEDICT,
HENRY WISE GARNETT,
Committee.

August 17th, 1887.

REPORT

OF THE

COMMITTEE ON COMMERCIAL LAW

ON

I. Proposed Act of Congress for the Regulation of Interstate Commerce, submitted by C. C. Bonney.

(*See Proceedings of* 1886, *page* 505.)

II. Resolution of Samuel Wagner, respecting the desirability and character of a National Bankruptcy Law.

(*See Proceedings of* 1886, *page* 79.

The two subjects referred to this committee are so intimately related to each other that it has been thought advisable to report upon them together, and, in order to report upon them intelligently, it has been found desirable that the consideration of the subjects shall include a survey of the whole field of interstate commerce, so that any conclusions reached by the committee may be reported as part of one complete and harmonious system for the regulation of the commercial relations of the American people.

Briefly stated, the questions for our consideration are,

1. Is there need of national legislation to regulate the commercial transactions between citizens of the different States of the Union?

2. Is there need of a national bankruptcy law?

Following these inquiries, if an affirmative answer to either should be reached, is the consideration of the extent, character, and form of legislation which may be requisite to accomplish the object in view.

I.

We find side by side in the Constitution the clauses giving Congress power to pass laws to regulate commerce among the States, and to establish uniform laws on the subject of bankruptcies; showing that the framers of the Constitution not only had in mind the close connection of these two subjects, but also considered that, with the growth of the internal commerce of the nation, the time might come when the necessity would arise for the exercise of one or both of these powers in such manner as to secure full, free, and untrammeled commerce throughout the country, and equal rights, privileges, and protection to all engaged in it. The practical question for consideration, therefore, is, whether this time has not arrived, and, if so, in what manner either or both of these powers should be now again and more fully exercised by Congress.

In a discussion of this question among lawyers, it is not necessary to submit any evidence in support of the proposition, that, with the present volume of business transactions between citizens of different States, there is imperative need of some uniform rules which shall distinctly define the essential principles of the law relating to those transactions, and protect and secure the rights of all who are parties to them. We all know, both from experience in our practice and from observation, that only a very small part of the business connected either with the manufacture and sale of goods or the development of the natural resources of our country is restricted to the limits of a single State, and we are only too familiar with the innumerable difficulties attendant upon the transaction of the immense volume of business over the whole country by reason of the diversity of the laws of the different States relating to them. Nor is it likely that any difference of opinion on this point exists among the business men of the country, for the difficulties of the case touch them directly. Expressions of the views of business men on this

subject have been so numerous, and have been made in so many different ways, that it is unnecessary to lengthen this report by any enumeration of them. The American Bankers' Association and the National Board of Trade, two bodies which may be taken to fairly represent the business community of the country, have each expressed in most distinct terms their opinion that such legislation is greatly needed.

But while there has been an entire *concensus* of opinion that legislation by Congress is needed to meet the difficulties of the case, there has been by no means a unanimous opinion in favor of the enactment of a national bankruptcy law. The reason for this is obvious. What is really most needed at the present time is broad and comprehensive legislation for the regulation of commerce among the several States, rather than the limited legislation for uniform laws on the subject of bankruptcies throughout the United States. It must not be forgotten that in all the legislation of Congress under these two clauses of the Constitution there has been a confusion of the functions of legislation relating to each. There has been included in all bankruptcy legislation machinery for the collection of debts, and there has been excluded from legislation for the regulation of commerce any clearly defined system of laws for the regulation of all interstate commercial transactions. Properly, bankruptcy legislation should be restricted to laws for the equal distribution of the assets of bankrupts among their creditors, and for the discharge, under proper conditions, of the debtors themselves; while legislation for the regulation of commerce among the States should properly include within its scope all such regulations as may be requisite to secure uniform rules for the conduct of business transactions extending beyond the limits of any one State. The business of the country has grown so enormously, and now extends over so vast a territory, that the methods adopted for conducting it have become of necessity such as are quite independent of State territorial lines. The various operations for the development of the natural re-

sources of the country, the gathering of crude materials for manufactures, the manufactures themselves, the gathering of goods to market centres, the distribution from these centres, the purchase and sale, the transportation from one point to another, the collection of the money due for the sale of goods —all require, in the present state of business, that, for business purposes at least, the country shall be considered as a single country, and not an aggregate of independent States. The railroad and the telegraph have brought all parts of the country close to one another, and, from a commercial point of view, have practically obliterated all lines of division between the States.

This, then, is not a political question, but rather one of national economy, and if it be true that the business interests of the country imperatively demand that there shall be, as far as possible, equality and uniformity of laws relating to commercial transactions throughout the whole Union, then it would seem to be a reasonable conclusion that the time has now come when Congress should fully and somewhat completely exercise the power given to it by the Constitution by passing such laws as may be necessary for the regulation of this vast volume of interstate commerce.

It should be noted also, in this connection, that the more national the view taken of this question, the greater is the independence of the States, for each being a part of the whole, and the interests of one being the interests of all, national legislation touching these points of common interest would effectually prevent the exclusion of any one State from the rights, privileges, and protection to which it is entitled as a component part of the Union. The rapid growth and prosperity of our country may rightly be attributed in a great degree to the fact that it is a union of States of very varied industries and natural resources, each contributing to the great mass of the nation's wealth, in which each is entitled to share. The fact that this view found no expression in the Articles of Confederation, and the many evils which resulted

in consequence, formed one of the chief reasons which led to the Philadelphia Convention and to the adoption of the Constitution, and the framers of that instrument took good care to make sure provision that the Union should be nationalized in respect to trade and commerce. It has been rightly said that the consolidation of the industrial interests of the country has proved to be the strongest bond of our national Union. The recognition of this fact, therefore, by national legislation providing such uniformity of law as will secure to each State the rights, privileges, and protection in this regard to which it is entitled as a component part of the Union, would not only be consistent with the principles upon which the Union was founded, but would also aid largely in the advancement of the material interests of each particular State, as well as of the country as a whole.

Since the reference to your committee of the subjects now under consideration, Congress has exercised its power under the Constitution by legislating in reference to interstate transportation, and whatever difference of opinion may exist as to the merits of that particular statute, it can scarcely be doubted that the debates upon it in Congress and the discussion of the question in the public press have led to a more comprehensive as well as a clearer view by the thoughtful people of the country of the nature, extent, and value of the power under which that legislation was made. Since our last meeting, also, the Supreme Court of the United States has rendered its decision in the case of the *Wabash, St. Louis and Pacific Railroad Co.* against *The State of Illinois*, which was argued in April, 1886, and has thus added to a long line of decisions, beginning as far back as *Gibbons* v. *Ogden*, in 1824, a clear and emphatic statement of the proposition that commerce among the States is necessarily a commerce which crosses State lines, and that the power of Congress to regulate it exists wherever that commerce is found. With these debates, this legislation of Congress, and this decision of the Supreme Court before them, the way is made clearer for your committee to

reach and to present intelligently the conclusions at which they have arrived after a careful consideration of the subjects referred to them.

That this power can properly be so exercised by Congress as to meet the necessities of the case, seems clear from the decisions of the Supreme Court of the United States in which the construction of this clause in the Constitution has come under discussion.

In *Gibbons* v. *Ogden*, 9 Wheaton 1, it was held that this commerce among the States embraces "buying and selling or the interchange of commodities." Chief Justice Marshall, in delivering the opinion of the court in that case, said: "Commerce undoubtedly is traffic, but it is something more, it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules for carrying on that intercourse."

In *Brown* v. *The State of Maryland*, 12 Wheaton 419, Chief Justice Marshall said: "The power is co-extensive with the subject on which it acts, and cannot be stopped at the external boundary of a State, but must enter its interior." And in the Passenger Cases, 7 Howard 283, the court, in speaking of the same power, say, "It extends to such acts done on the land as interfere with, obstruct, or prevent its due exercise."

In *Welton* v. *The State of Missouri*, decided in 1875 (91 U. S. 275), Mr. Justice Field, in delivering the opinion of the court, said: "The power to regulate, conferred by that clause upon Congress, is one without limitation, and to regulate commerce is to prescribe rules by which it shall be governed; that is, the conditions upon which it shall be conducted; to determine how far it shall be free and untrammeled, how far it shall be burdened by duties and imposts, and how far it shall be prohibited. Commerce is a term of the largest import. It comprehends intercourse for the purpose of trade in all of its forms, including the transportation, purchase,

sale, and exchange of commodities between the citizens of one country and the citizens or subjects of other countries, and between the citizens of different States. The power to regulate embraces all the instruments by which such commerce may be conducted." And the same judge, in delivering the opinion of the court in *Sherlock* v. *Alling*, 93 U. S. 103, in 1876, said: "It is true that the commercial power conferred by the Constitution is one without limitation. It authorizes legislation with respect to all the subjects of foreign and interstate commerce, the persons engaged in it, and the instruments by which it is carried on. Whatever Congress determines, either as to a regulation or the liability for its infringement, is exclusive of State authority."

In *Inman Steamship Co.* v. *Tinker*, 94 U. S. 245, decided in 1876, the court said: "The commerce clauses of the Constitution had their origin in a wise and salutary policy. They give to Congress the entire control of the foreign and interstate commerce of the country. They were intended to secure *harmony* and *uniformity* in the relations by which they should be governed. Wherever such commerce goes, the power of the nation accompanies it, ready and competent, as far as possible, to promote its prosperity, and redress the wrongs and evils to which it may be subjected."

In *Railroad Co.* v. *Husen*, 95 U. S. 469, decided in 1877, a case in which the question was whether a certain statute of Texas was a legitimate exercise of the police power of the State, we have the following language from Mr. Justice Strong: "Unless the statute can be justified as a legitimate exercise of the police power of the State, it is a usurpation of the power vested exclusively in Congress. It is a plain regulation of interstate commerce, a regulation extending to prohibition. Whatever may be the power of a State over commerce that is completely internal, it can no more prohibit or regulate that which is interstate than it can that which is with foreign nations. Power over one is given by the Constitution to Congress in the same words in which it is

given over the other, and in both cases it is necessarily exclusive."

In the case of *Pensacola Telegraph Co.* v. *Western Union Telegraph Co.*, 96 U. S. 1, in which was denied the power of the State of Florida to give the exclusive right to establish telegraphs in that State to one company, Mr. Chief Justice Waite, in delivering the opinion of the court, points out very clearly that the powers of Congress to regulate commerce are not confined to the instrumentalities of commerce known or in use when the Constitution was adopted, but that they keep pace with the progress of the country, and adapt themselves to the new developments of time and circumstances; and he adds: "The government of the United States, within the scope of its powers, operates upon every foot of territory under its jurisdiction. It legislates for the whole nation, and is not embarrassed by State line. Its peculiar duty is to protect one part of the country from encroachments by another upon the national rights which belong to all."

And again, in 1880, in *County of Mobile* v. *Kimball*, 102 U. S. 691, Mr. Justice Field, in delivering the opinion of the court, says: "That power is indeed without limitation. It authorizes Congress to prescribe the conditions upon which commerce in all its forms shall be conducted between our citizens and the citizens or subjects of other countries, and between the citizens of the several States, and to adopt measures to promote its growth and insure its safety. . . . The subjects, indeed, upon which Congress can act under this power are of infinite variety, requiring for their successful management different plans or modes of treatment. Some of them are national in their character, and admit and require uniformity of regulation, affecting alike all the States; others are local, or are mere aids to commerce, and can only be properly regulated by provisions adapted to their special circumstances and localities. Of the former class may be mentioned all that portion of commerce with foreign countries or between the States which consists in the transportation, pur-

chase, sale, and exchange of commodities. Here there can of necessity be only one system or plan of regulations, and that Congress can alone prescribe. . . . And it is a matter of public history that the object of vesting in Congress the power to regulate commerce with foreign nations and among the States was to insure uniformity of regulation against conflicting and discriminating State legislation."

In the very instructive case of *The Gloucester Ferry Co.* v. *The Commonwealth of Pennsylvania,* decided in 1885, 114 U. S. 196, in which all the authorities were carefully reviewed, it was held that when the subjects of commerce are national in character, and require uniformity of regulation affecting alike all the States, the power of Congress is exclusive. Mr. Justice Field, in delivering the opinion of the court, says: "The power to regulate that commerce, as well as commerce with foreign nations, vested in Congress, is the power to prescribe the rules by which it shall be governed; that is, the conditions upon which it shall be conducted; to determine when it shall be free and when subject to duties or other exactions. The power also embraces within its control all the instrumentalities by which that commerce may be carried on, and the means by which it may be aided and encouraged. The subjects, therefore, upon which the power may be exerted, are of infinite variety. While with reference to some of them, which are local and limited in their nature or sphere of operation, the State may prescribe regulations until Congress intervenes and assumes control of them; yet, when they are national in their character, and require a uniformity of regulation affecting alike all the States, the power of Congress is exclusive."

The later cases of *Brown* v. *Houston,* 114 U. S. 622, and *Walling* v. *The State of Michigan,* 116 U. S. 446, in both of which the opinion of the court was delivered by Mr. Justice Bradley, are to the same effect.

The very recent case of the *Wabash Railroad* v. *The State of Illinois,* 118 U. S. 557, with which the general public is more

familiar, decided in October, 1886, in which the opinion of the court was delivered by Mr. Justice Miller, affirms this same view of the exclusive power of Congress in questions affecting interstate commerce, holding that transportation of goods is "commerce among the States" even as to that part of the voyage which lies within a State, when it is connected with carriage outside of the State, and denying to State railroad and warehouse commissioners any jurisdiction over property in transit between the States.

In one of the latest decisions on this subject, in the case of *Robbins* v. *The Taxing District of Shelby County, Tennessee*, 120 U. S. 489, decided in March of the present year, three fundamental principles are stated as having already been established by the decisions of the court.

First. That the power to regulate commerce among the States given to Congress by the Constitution is necessarily exclusive wherever the subjects of it are national in their character, or admit only of one uniform system or plan of regulation.

Second. When the power of Congress to regulate is exclusive, the failure of Congress to make express regulations indicates its will that the subject shall be left free from any restrictions or impositions, and any regulation of the subject by the States, except in matters of local concern only, as hereafter mentioned, is repugnant to such freedom.

Third. That the only way in which commerce between the States can be legitimately affected by State laws, is when, by virtue of its police power and its jurisdiction over persons and property within its limits, a State provides for the security of the lives, limbs, health, and comfort of persons and the protection of property, or when it does those things which may otherwise incidentally affect commerce, such as the establishment and regulation of highways, canals, railroads, wharves, ferries, and other commercial facilities; the passage of inspection laws to secure the due quality and measure of products and commodities; the passage of laws to regulate

and restrict the sale of articles deemed injurious to the health or morals of the community; the imposition of taxes upon persons residing within the State, and upon avocations pursued therein not directly connected with foreign or interstate commerce, and upon all property within the State mingled with and forming part of the mass of property therein. And, in summing up its conclusions based upon these three fundamental principles, the court uses the following very significant language: "In a word, it may be said that in the matter of interstate commerce the United States are but one country, and are and must be subject to one system of regulations, and not to a multitude of systems."

On the last day of the last term of the Supreme Court two decisions were rendered. *Western Union Tel. Co.* v. *Pendelton*, 122 U. S. 347, and *Philadelphia Steamship Co.* v. *Pennsylania*, 122 U. S. 326, in each of which is affirmed in very distinct terms the view already so clearly stated by the court. In the last-named case Mr. Justice Bradley quotes from the following language of Chief Justice Marshall in *Brown* v. *Maryland*, with which these citations of authorities may fitly close: "The oppressed and degraded state of commerce previous to the adoption of the Constitution can scarcely be forgotten. It was regulated by foreign nations with a single view to their own interests, and our disunited efforts to counteract their restrictions were rendered impotent by want of combination. Those that felt the injury arising from this state of things, and those who were capable of estimating the influence of commerce on the prosperity of nations, perceived the necessity of giving the control over this important subject to a single government. It may be doubted whether any of the evils proceeding from the feebleness of the federal government contributed more to that great revolution which introduced the present system than the deep and general conviction that commerce ought to be regulated by Congress. It is not, therefore, matter of surprise that the grant should be as extensive as the mischief,

and should comprehend all foreign commerce and all commerce among the States. To construe the power so as to impair its efficacy would tend to defeat an object in the attainment of which the American public took, and justly took, that strong interest which arose from a full conviction of its necessity."

It is evident, then, that the Supreme Court of the United States has construed "Commerce among the States," in the Constitution, to be words of very large and comprehensive signification, and has construed the language giving to Congress the power to regulate this commerce to mean that the power thus given is limited only by the extent of the subject-matter to which it relates. As, therefore, this commerce, in the language of the court, "relates to buying and selling and exchanging of commodities which is the essence of commerce," it can scarcely be doubted when merchants in one State buy goods from those in other States, thereby involving the transportation of the goods from the seller to the purchaser, the collection of the price, and the transfer of the money or other value given or promised in exchange, that the power of Congress extends to the passage of such laws as may be necessary to regulate these transactions in all their details, by prescribing the rights and obligations of all parties concerned, and by prohibiting everything which in any way prevents or obstructs the essential features of all commercial transactions, the purchase or sale, delivery and payment. It would seem, therefore, that in these interstate commercial transactions all the rights and obligations connected with the contracts of purchase or sale, including the protection of creditors against the unjust preference of other creditors and against the operation of unreasonable exemptions of property from the payment of debts, fall just as much within the scope of the power of Congress to regulate commerce among the States as does protection in the matter of the transportation of the goods which are the subject of the commercial transactions.

If this be so, there is no reason why that uniformity of law relating to business transactions throughout the country which is now so much needed, may not be attained readily, and in a very simple way, by congressional legislation for the regulation of commerce among the States.

Such legislation should, in the judgment of this committee, be based upon the view that interstate commerce is the commerce of one country and not the commerce of different States, and should include all such measures as may be necessary to the practical application of this view. As legislation for regulating the commerce of one country, with equal rights, privileges, and protection to every class and every section, it should include whatever may be requisite to secure those ends. Especially it should include, as matters of pressing importance at the present time, laws relating to credits and the collection of debts, and relating to bills of exchange and other commercial paper. The enactment by Congress of suitable laws on these subjects would not only bring to the whole business community of the country immediate relief from great vexation and loss, but would be a wise and decisive step toward the enactment of a simple and concise code of commercial law for interstate commerce, which, if adopted by each State for its own internal commerce, would secure uniformity of commercial law throughout the country. That such a code would soon be adopted by the several States, may be regarded, from the standpoint of self-interest, as a moral certainty.

II.

We come now to the second branch of our inquiry—Is there need of a national bankruptcy law, and if so, what should be the character and form of such a law?

To answer this inquiry intelligently, it is necessary to glance at the history of bankruptcy legislation in England, on the Continent, and in our own country; for a satisfactory determination of the question depends largely on our ability

to obtain some estimate of what may be accomplished in this regard by a careful examination of the results already obtained, either in our own country or elsewhere. Some points in this history of bankruptcy legislation were touched upon in a paper read by a member of this committee before the Association at its meeting in 1881, but, as that paper was only intended to introduce the subject for discussion by the Association, it was somewhat fragmentary; and it seems to your committee to be desirable to consider the subject now somewhat more critically.

The primary object in view in all bankruptcy legislation, from the *missio in bona* and the *cessio bonorum* of the Roman law down to the English Bankruptcy Act of 1883, undoubtedly has been to secure the equal distribution of the bankrupt's property among his creditors. It does not appear that the Roman law made any provision for the discharge of the debtor from all his debts, but the intention of the provisions in the Justinian code seems to have been that he should be allowed an opportunity to pay his debts in full. The first recognition of the claims of the debtor to be discharged wholly from his debts occurs in the early bankruptcy legislation of England, and seems to have arisen from the view that, in the commercial growth of that country, the interests of trade imperatively demanded a fair consideration of the claims of both debtor and creditor. In the first adjudicated case under the statute of 13 Elizabeth, c. 7, the first bankruptcy act of England which may be fairly so called, we find this language by Lord Coke—"So that the intent of the makers of this act, expressed in plain words, was to relieve the creditors of the bankrupt equally, and that there should be an equal and ratable proportion observed in the distribution of the bankrupt's goods among his creditors, having regard to their several debts; so that one should not prevent the other, but all should be '*in æquali jure.*'" This statute of 13 Elizabeth made no provision for the discharge of the debtor from his debts, and it was not until more than a cen-

tury afterward that the statute of 16 Anne, c. 17, provided for the debtor's discharge by *certificate*. This provision seems to have marked the beginning of difficulties, for the whole legislation of England has been based upon this view; and it indicates a continued effort to frame a bankruptcy act which shall successfully accomplish these two objects of protecting both the debtor and the creditor. That the difficulties of this task are great is evident from the fact that it involves the necessity of protecting, by a nice adjustment, various and conflicting interests; and the history of this effort in England seems to show that it is very questionable whether a completely satisfactory solution of the problem can be attained, there or elsewhere. With the exception of the statute of 5 George II, which was little more than a re-enactment of the statute of Anne, there were no material changes until the amended acts of Sir Samuel Romilly in 1806 and 1809. The tendency of those acts was to extend the protection granted to the debtor, and the operation of them caused so much dissatisfaction among business men that Parliament was induced to appoint a committee to consider the whole subject. The result of the report of that committee, which was presented in 1818, was the act of 1825, which was really the starting point of what may be called the modern English bankruptcy legislation. There followed acts in 1831, 1849, 1861, and 1869, and finally the act of 1883, which is now in force. It would be tedious to enter into the difference in the details of these successive acts. It is sufficient for the purposes of this report to say that they seem to show an alternate swinging of the pendulum toward the interests of the debtor on the one hand and the interests of the creditor on the other, and at the same time an oscillation between an *official* system of administration, mainly by the court, and an *unofficial* system, mainly by the creditors; the present act of 1883 being a conscientious and earnest effort to so regulate the power and adjust the machinery that the pendulum shall not swing too far either way.

In Scotland there is, and has been since 1856, a bankruptcy system which has been eminently successful and satisfactory there. It is largely *unofficial*, and its provisions as regards the debtor are very stringent. It is likely, however, that its success is due not so much to the intrinsic merits of the system itself, as to the peculiar characteristics of the people of Scotland, who are so careful and exact in their business methods, and so willing to give all the time and attention necessary to protect their business interests. This is shown from the fact that when England and our own country have borrowed very largely from the chief features of this system, the results have been wholly unsatisfactory.

On the Continent, the systems of both France and Germany, which are very much alike, have been worked out upon lines exactly contrary to those followed in England. They are characterized by extreme severity toward the debtor, and by extreme *officialism*, the court exercising a very close supervision over the administration. In France there is a broad distinction made between *insolvency* and *bankruptcy*, the one being a civil and the other a criminal matter. Every trader who suspends payment is deemed *insolvent*, and must within three days after such suspension file a declaration to that effect, with a balance sheet detailing every particular of profits and losses, assets and liabilities. Provisional trustees are at once appointed, who immediately call the insolvent before them and close and inspect his books; and then and there the judge-commissioner may examine the insolvent, his clerks, employees, and all other persons supposed to be able to give information as to the balance sheet, or the causes and circumstances of the insolvency. The subsequent proceedings are conducted under the direction of the court, with whom alone rests the decision as to the excusability of the insolvency. Should the insolvent not be declared excusable, the creditors re-enter into the exercise of their rights, both against the property and the persou of the debtor. If declared excusable, he shall be exempt from imprisonment as

regards the creditors, and he shall not be further pursued by them *save as regards his property*, except in cases directed by special laws. Under the head of *bankruptcy*, which, as we have seen, is a criminal matter, there is the division into *simple bankruptcy and fraudulent bankruptcy;* but insolvents who fall under either of these heads are punished in accordance with the penal code. An insolvent is declared guilty of *simple bankruptcy* if his personal expenses or those of his household are found to be excessive, if he has lost large sums either in gambling or in operations on the stock exchange or in merchandise; if, with the intention of staving off his failure, he has bought goods to be sold below their market price, or with like intention has borrowed large sums of money, put bills into circulation, or adopted other ruinous means for obtaining money, or if, after suspension, he has paid any one creditor to the prejudice of others. Or he *may* be declared guilty of *simple bankruptcy*, if he has contracted for account of others without receiving value in exchange for amounts which shall be deemed excessive, having regard to the position he was in, if within three days of suspending payment he has omitted to make the declaration required, or has failed to present himself on the occasions named by law, or if he has not kept books and made an inventory, or if his books and inventory are kept irregularly and do not give a true statement of his assets and liabilities. An insolvent is declared guilty of *fraudulent bankruptcy* if he has made away with his books, or has abstracted or concealed a part of his assets, or by written instrument, or public acts, or in his balance sheet, has fraudulently admitted himself to be indebted in sums he does not owe.

These provisions of the French law have been quoted somewhat fully because they seem to show that a thorough and efficient system of bankruptcy law can best be administered under the immediate and complete direction of the court. The system has been in continuous operation to the entire satisfaction of a majority of the French people ever

since the year 1838, and it may be taken therefore to be an element of especial value in the study of the history of bankruptcy legislation.

Of the bankruptcy legislation of our own country little need be said, for we have never worked out and adopted permanently any bankruptcy system. Such legislation as we have had has been so spasmodic, and of such brief duration, that it is scarcely possible to draw from the consideration of its character any valuable conclusions. The only periods when we have been under the administration of a bankruptcy law were from 1800 to 1801, from 1841 to 1843, and from 1867 to 1878—fourteen years in all in the century of our national life. We are the only one of the great nations of the world which has persistently refused to adopt a permanent system of bankruptcy laws, such action as we have taken being based simply upon the crude notion that a bankruptcy law should be used only as a heroic measure in times of great financial difficulties to wipe off a vast quantity of hopeless debts. It is only within the last few years that anything like a serious and intelligent consideration of the subject has begun, and thus far the discussion of the subject, both in Congress and outside of it, has been so much directed to the question of the form which a bankruptcy law should take that we have been in danger of losing sight of the real question underlying the whole discussion, and the one which should chiefly exercise the mind of the lawyers and the business men of the country, which is, whether we are not now prepared as a nation to commit ourselves to the adoption of a permanent system of bankruptcy law and administration. The agitation and discussion of this subject in a period of national prosperity is tantamount to the admission that, if a system shall be adopted at all, it will be because it is needed as a permanent institution for the regulation of the financial and commercial affairs of the country, and not merely to meet present and temporary difficulties.

The present diversity of opinion as to the advisability of

adopting permanent bankruptcy legislation unquestionably arises, in great part, from the unhappy experience we have had in the operation of the Act of 1867. That act, though undoubtedly intended originally to be chiefly in the interest of the debtor, became, in fact, in its completed form, a law for the collection of debts under the name of a bankruptcy law. This confusion of the functions of legislation would of itself have been sufficient to condemn it, but there was also the fatal objection to it that it contained a mass of administrative details, instead of providing, in a simple way, swift, easy, and efficient remedies for the evils it was intended to meet. Being so encumbered in its administration by complicated and unmanageable machinery, the result was, as we all know, that its operations were entirely unsatisfactory.

It is evident, then, that the hasty, incomplete, and unintelligent action which has thus far characterized our bankruptcy legislation has produced the effect of creating a doubt as to the wisdom of adopting any system of bankruptcy legislation at all, and we have been put in great danger of losing sight of the point that a properly formed, well ordered, and permanent bankruptcy system is necessary for the proper regulation of the commercial affairs of the Union. To a mind accustomed to the consideration of legal principles in their application to commercial affairs, it is almost inconceivable that the internal commerce of a nation can be successfully carried on without such a system, and, from a practical point of view, the necessity for it in our own country is especially evident, because of the extent and variety of the interests involved, and because of the diversity of the laws of the different States.

If, therefore, there be any difference of opinion among lawyers on this subject, it is likely that it arises solely from a difficulty in deciding as to the form which legislation should take in order to accomplish the object in view. This difficulty, in the judgment of your committee, is readily and completely removed by avoiding in such legislation all ad-

ministrative details, leaving the administration of the law to be conducted according to the familiar and well-established rules which have stood the test of time and experience. The introduction of administrative details make such a law a cumbersome and unmanageable machine, whose numerous and complicated parts so clog the action of each other that the value of the power exerted to move it is lost before any work is done. The principles underlying a bankruptcy law are familiar principles of equity, which courts of equity are daily applying, so that nothing more is needed than that Congress, under the power given to it by the Constitution, shall confer upon the court of the United States authority to exercise their power as courts of equity for the benefit and relief of creditors and their debtors in cases in which the debtors are unable or unwilling to pay their debts. Such a bankruptcy law need be but a simple, short, and concise Act of Congress, and the power being thus given, the simple and effective machinery for its exercise is found ready at hand. There is a good deal of significance in the fact that the very first legislation on this subject in England (34 and 35 Hen. VIII), simply provided that "The Chancellor shall take order in the matter," etc., and with the history of England's Court of Chancery, and of her bankruptcy legislation before us, it is safe to venture the opinion that an adherence to the principle at first adopted would have tended to very much simplify in the end her system of bankruptcy law and administration.

It is submitted, therefore, that we may learn from our own experience, as well as from the history of bankruptcy legislation in England and on the Continent of Europe, these two things: First, that a system of bankruptcy law, of the right kind, and properly administered, is of the highest value as an element in the adjustment and regulation of the commercial interests of a nation, and that such a system, to be of real value, should be permanent in its operations, and not used only to meet peculiar conditions existing at particular times.

Second, That such legislation, in any country, certainly in our own country, should consist of a short and simple statute providing swift, easy, and efficient remedies without administrative details, and administered by methods familiar to judges and legal practitioners and found by experience to be the most efficient.

The conclusions which your Committee have reached after a careful consideration of the subjects referred to them are:

First, That the present needs of the business community for uniformity of law relating to the enforcement of contracts and the collection of debts imperatively demand national legislation as the only adequate means by which the desired relief and protection can be attained.

Second, That so far as interstate commercial transactions are concerned, Congress has full power to provide the necessary relief and protection by legislation under the clause of the Constitution giving to it the power to pass laws to regulate commerce among the States.

Third, That this legislation requires only a short and simple Act of Congress, such as would be easily intelligible to every business man, and its administration would require only the exercise of the ordinary equity powers of the courts of the United States.

Fourth, That, in the exercise of the same power, Congress should enact a statute defining the law relating to bills of exchange and other commercial paper, so far as the same is involved in interstate commerce.

Fifth, That if such legislation be once adopted, it is likely that the State legislatures would enact the same provisions for the regulation of commerce among their own citizens, and there would thus be provided a completely uniform system of law relating to the essential features of commercial transactions throughout the whole country.

Sixth, That it is desirable that Congress should enact a national bankruptcy law, and that such a law should be a

short, simple, and concise Act, and its administration should be under the direction of the court according to the ordinary and familiar rules of a court of equity.

The Committee recommend, if this report be approved, that the Association take such action as will bring this subject prominently before the people of the country, so that there may be brought to bear upon Congress, at its next session, evidence of the pressing need of the business community throughout the Union for relief and protection from present difficulties which the proposed legislation alone can afford.

The committee have not undertaken to consider and recommend the details of the legislation required to accomplish the desired results, but in order to suggest, in a general way, an appropriate form of Congressional action, the committee append hereto a draft of a bankruptcy bill drawn by one of its members in general conformity to the views above expressed; together with the bill to regulate interstate debts, credits, and collections, which was submitted at the last annual meeting of our Association.

These bills are not given as complete and perfect, but merely as furnishing a proper ground for intelligent discussion and progress.

Although the subject of a uniformity of commercial paper in all interstate transactions was not in terms referred to this Committee, it is so intimately connected with the particular topics they were directed to consider, that the Committee have deemed it their duty to direct the attention of the Association to the bill to secure such uniformity, which was prepared by a member of the Committee for the American Bankers' Association, and introduced in Congress by the late Judge Poland, in whose death since the last meeting of the Association we are called to mourn the loss of so good a friend, and one so highly esteemed and so affectionately regarded by us all. His warm support of the measure is one more important service for which both the profession and the country are indebted to him.

The Committee recommend the adoption of the following resolution:

Resolved, That the report of the committee on commercial law be adopted, and that the committee be empowered to take such action on behalf of the American Bar Association as they may deem necessary or expedient to secure the legislation recommended in their report.

All of which is respectfully submitted.

GEORGE A. MERCER,
C. C. BONNEY,
SAMUEL WAGNER.

APPENDIX.

BANKRUPTCY BILL.

The Equity Bill as reported for passage by the Senate Judiciary Committee, with the recent amendments proposed by the author of the bill, is as follows. The amendments are indicated by brackets:

A BILL to establish a uniform system of bankruptcy throughout the United States:

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That whenever any person, without fraud, shall have become involved in debts and liabilities beyond his means of payment, and amounting to $500 or upward, he may apply by petition in equity setting forth his insolvency, and the cause thereof, with schedules of his liabilities and assets, duly verified, to the district court of the United States for the district in which he may reside, on which jurisdiction is hereby conferred, to surrender his estate for the benefit of his creditors, except so much as shall be exempt from execution under and by the laws of the State where he resides, and thereupon if good

cause appear, the court shall adjudge the petitioner to be a bankrupt, appoint a receiver of such estate, and cause reasonable notice by service, mail, publication, or otherwise, to be given to all persons interested, and shall proceed [in a summary way] to hear and dispose of the cause upon its merits as the pleadings and proofs may require, and to marshal and distribute said estate among the creditors of the petitioner according to the rules and practice of equity. And if it shall appear that such debts and liabilities were incurred without fraud, and that the inability of the debtor to make payment has arisen from accident and misfortune, and without fraud, the court shall grant him a discharge as a bankrupt from all such debts and liabilities. This act shall also apply to corporations. [But no person shall be entitled to a discharge in bankruptcy who, without loss from sudden accident and misfortune, such as fire, the failure of third persons, or the like, suffers his assets to become so depreciated or wasted that they will not pay at least fifty cents upon a dollar of his indebtedness, unless at least two-thirds in number and two-thirds in amount of his creditors shall consent to his discharge.

In case any debtor shall voluntarily settle his affairs with his creditors out of court, but in conformity with the principles of this act, and of the rules that may be established under it, he may apply for and obtain his discharge as in other cases, on showing his right thereto.]

SEC. 2. That whenever any person residing and owing debts as aforesaid, after the passage of this act, departs from the State, district, or Territory of which he is an inhabitant, with an intent to defraud his creditors, or, being absent, remains so, with like intent, or conceals himself to avoid arrest or service of legal process issued or feared, or makes a fraudulent transfer of his property, or conceals or removes the same to avoid process, or, with intent to defraud his creditors, procures or suffers judgment against him, or gives a warrant to confess judgment or a judgment note, with like

intent, or who, having been arrested in any civil action fails or neglects to give bail, or in some other mode to procure his discharge for twenty days, or fails to dissolve an attachment laid upon his property in a civil action for a like period, or fails for sixty days to satisfy a final judgment or decree rendered against him for the payment of money, unless a *supersedeas* or stay of execution has been effected in respect thereto, or who, being a trader, has suspended and not resumed payment of his commercial paper, open accounts made, passed, or contracted in the course of his business, for a period of thirty days after the same were payable, or who, being insolvent, makes a preference of any creditor except as by this act permitted, or makes an assignment for the benefit of existing creditors with or without preference, any creditor or creditors may file such a petition [duly verified by affidavit] in behalf of all persons interested, and thereupon the like proceedings shall be had as in the case of a petition by the debtor.

[*Provided*, that this section shall not apply to any farmer, mechanic, or professional person; and, *Provided further*, that no petition in involuntary bankruptcy shall be filed until after bond given in such sum, and with such sureties as the district judge shall approve, conditioned for the payment of all such damages, expenses, and costs as may be awarded by that or any other court, for the wrongful institution or prosecution of the proceedings.]

Insolvency under this act shall be deemed to exist only when the debtor's liabilities exceed in amount the value of his property liable to execution, and the available debts due him.

SEC. 3. That the court shall have power to grant extensions of time for payment, and to reduce the amount of indebtedness pro rata, for the purpose of allowing the debtor to proceed with his business, if it shall seem best to so do. And any agreement between the debtor and a majority in amount and number of his creditors may be carried into effect, if approved by the court.

SEC. 4. That the court may, at any time during the proceedings, order that all or any other proceedings be stayed or dismissed, and may require all or any claims to be presented to it for determination, or may allow any other proceeding to be prosecuted to final judgment, and such judgment to be filed in the bankruptcy. Any claim not due may be matured by a rebate under an order of the court.

[And set-offs and recoupments shall be allowed as shall seem just, without distinction between legal and equitable, or joint and several claims; and any uncertain, contingent, or disputed demand, whether for or against the bankrupt, may be adjusted in a summary way, by compromise, arbitrament, or otherwise, with the approval of the court.] No creditor shall be prejudiced by having taken security in good faith, and without notice of impending bankruptcy; but securities otherwise taken may be set aside.

SEC. 5. That any interlocutory matter in the course of the proceedings may be heard before any standing or special master in chancery, and under a standing or a special order of reference, and at any place designated in such order; but all the decisions of such masters shall be subject to the summary and informal supervision and control of the court.

[Evidence may be taken before the hearing, or orally upon the same, and shall not be written out in full, but its substance only shall be stated, unless otherwise ordered by the court or judge.]

The circuit judge and the associate justice of the supreme court assigned to the circuit shall have and exercise a like supervision and control over all the proceedings of the district court in bankruptcy; and at the request of any person aggrieved by any decision of the district court, or the judge thereof, he shall forthwith certify the questions involved in such decision to the circuit judge for summary review and redetermination; and any decision of the circuit judge may be in like manner reviewed by said justice of the

supreme court; or the party aggrieved may seek such relief by appeal, as in other cases.

[*Provided*, such appeal shall be allowed by the judge of the appellate court.]

SEC. 6. That any conveyance, transfer, or payment made and received in view of bankruptcy may be set aside if found to be contrary to the just rights of other creditors. But money obtained and used in good faith, though unsuccessfully, to avert an impending bankruptcy, or to save a threatened sacrifice of property, or for sickness or other like necessity, may be preferred in payment or in security by the court.

SEC. 7. That if it shall appear that any creditor has willfully and oppressively sought to bring about the bankruptcy of the debtor, or to obtain any fraudulent advantage over other creditors, the court may deny such wrongdoer any participation in the estate, or only a partial benefit of his claim, as may seem just. The discharge of the bankrupt shall not operate against any liability for fraud, trespass, or other willful tort; but the validity of any discharge in bankruptcy shall not be contested after the expiration of two years from its date.

SEC. 8. That the district courts shall be considered as always open for the reception and consideration of business under this act, and at their regular terms the bankruptcy business shall have precedence over all other kinds.

[Except criminal cases in which the defendant is in custody.]

SEC. 9. That it shall be the duty of the Supreme Court to make such additional rules in equity, if any, as may be required to [facilitate and simplify the proceedings and] carry this act into full effect, and to fix all fees and costs for services in bankruptcy under this act, [*Provided*, that until the Supreme Court shall have made and published a schedule of such fees and costs, the respective district and circuit courts shall allow such as they may deem reasonable.]

INTERSTATE DEBTS, CREDITS, AND COLLECTIONS.

This part of the proposed system of commercial regulation by Act of Congress, consists of a bill for an act to protect manufacturers and merchants, as far as justly may be, against the fraud of appropriating their property when not paid for, to satisfy debts due to other parties; also to prevent unjust discriminations in the application of the proceeds of the estates of insolvent debtors to the payment of claims against them.

The bill to regulate debts, credits, and collections is as follows:

A BILL for an act to further regulate commerce among the several States, and particularly to regulate the relations of creditor and debtor, and the collection of debts:

Be it enacted, etc. SECTION 1. That debts and credits, and the rights, liabilities, and relations of creditors and debtors, in all cases arising out of any transaction, matter, or thing belonging to commerce among the several States shall be subject to and governed by the following rules and regulations, unless otherwise, in a particular case or class of cases, expressly provided by some other statute of the United States.

SEC. 2. That the vendor of any goods, wares, and merchandise, or any security, evidence of indebtedness, or other personal property, shall have, against the purchaser thereof, and all persons holding under him, except as hereinafter specified, a lien and equitable mortgage on the same, for the purchase price thereof, or so much of the same as may at any time be unpaid; and such lien and mortgage shall extend to the proceeds of the property, so far as the same can be clearly traced, identified, and separated; and particularly to any unpaid notes, bills, or accounts receivable, taken and held for the same. Such lien shall be enforceable by a short bill in equity.

SEC. 3. Such lien and mortgage shall not be of any validity, force, or effect as against any third person who shall in good

faith have paid or loaned any money for or upon such property, or shall have become bound so to do; nor shall such lien in any manner interfere with or hinder the free sale and disposition of any such property, according to the usual course of trade and commerce, but every such sale and disposition shall be wholly free from such lien.

SEC. 4. In case any debtor shall become bankrupt or insolvent, or shall fail and suspend payment of his commercial debts and liabilities, the seller of any such property as is above enumerated, for which payment has not been made or secured, may rescind such sale, in the whole or for any divisible part; and may thereupon proceed in any lawful manner to regain the possession of the property covered by such rescission: *Provided*, That such course shall not be taken in any case where any third person has in good faith acquired any right to or interest in the property by any payment, loan, or contract made according to the usual course of business.

SEC. 5. That in case of the bankruptcy, insolvency, failure, and suspension of payment aforesaid, of any debtor, the creditor holding any claim or demand against such debtor, which has arisen in the course or from transactions belonging to commerce among the several States, shall be entitled to share in the proceeds of the estate, and to receive payment to the same extent in all respects as the most favored creditor who resides in the same State as that of which the debtor is an inhabitant, any mortgage, pledge, judgment, or other security or proceeding to the contrary notwithstanding, except securities and transactions for actual money or its equivalent advanced by third persons to the debtor in good faith upon property set apart and pledged for its repayment.

SEC. 6. In case of the bankruptcy or insolvency, failure, or suspension of payment of any merchant or trader, who is then owing any debt created in the course of commerce among the several States, whether such debt shall have matured

or not, the holder thereof, or his agent or attorney, may apply to any court having equity jurisdiction, to take charge of the assets and place of business of the debtor, and preserve the same from destruction and loss, and cause all the liabilities of the debtor to be ascertained and fixed, the credits to be collected or sold, the assets to be converted into money either in due course of trade or by forced sale, and either for cash or on credit, as may seem best, and out of the proceeds thereof to pay or permit the debtor to pay to every creditor not a resident of the State in which the debtor resides his proper share and proportion of the assets of the debtor, in case there shall not be enough to make payment in full of all the debts and liabilities.

SEC. 7. The homestead and household effects of any debtor, provided the same shall have been acquired and paid for in good faith, and shall be reasonably suited to his condition in life, shall not be deemed a basis of credit in any case under this act, but shall be exempt from process for the collection of debts, whether legal or equitable. In case any creditor shall charge on oath that the homestead or household effects of any debtor exceed in value what is reasonably suited to his condition in life, or that the same, in whole or in any specific part, were not acquired and paid for in good faith, but were acquired and are held in fraud of creditors, such charge shall be tried and determined, under the direction of the court, in as speedy and summary a way as the nature of the case may allow, and such order, judgment, or decree be entered as equity and justice may require. No other or greater exemption shall be allowed in any case arising under this act.

A BILL

To regulate commerce among the several States, and to codify the law relating to bills of exchange and other commercial paper.

ARRANGEMENT OF SECTIONS.

PART I.—PRELIMINARY.

SEC.
1. Regulations of commerce.
2. Short title and interpretation of terms.

PART II.—BILLS OF EXCHANGE.

Form and interpretation.

3. Bill of exchange defined.
4. Inland and foreign bills.
5. Effect where different parties to bill are the same person.
6. Address to drawee.
7. Certainty required as to payee.
8. What bills are negotiable.
9. Sum payable.
10. Bill payable on demand.
11. Bill payable at a future time.
12. Omission of date in bill payable after date.
13. Ante-dating and post-dating.
14. Computation of time of payment.
15. Case of need.
16. Optional stipulations by drawer or indorser.
17. Definition and requisites of acceptance.
18. Time for acceptance.
19. General and qualified acceptances.
20. Inchoate instruments.
21. Delivery.

Capacity and authority of parties.

22. Capacity of parties.
23. Signature essential to liability.
24. Forged or unauthorized signature.
25. Procuration signatures.
26. Persons signing as agent or in representative capacity.

The consideration for a bill.

27. Value, and holder for value.
28. Accommodation bill or party.
29. Holder in due course.

SEC.
30. Presumption of value and good faith.

Negotiation of bills.

31. Negotiation of bill.
32. Requisites of a valid indorsement.
33. Conditional indorsement.
34. Indorsement in blank and special indorsement.
35. Restrictive indorsement.
36. Negotiation of over-due or dishonored bill.
37. Negotiation of bill to party already liable thereon.
38. Rights of the holder.

General duties of the holder.

39. When presentment for acceptance is necessary.
40. Time for presenting bill payable after sight.
41. Rules as to presentment for acceptance, and excuses for non-presentment.
42. Non-acceptance.
43. Dishonor by non-acceptance and its consequences.
44. Duties as to qualified acceptances.
45. Rules as to presentment for payment.
46. Excuses for delay or non-presentment for payment.
47. Dishonor by non-payment.
48. Notice of dishonor and effect of non-notice.
49. Rules as to notice of dishonor.
50. Excuses for non-notice and delay.
51. Noting or protest of bill.
52. Duties of holder as regards drawee or acceptor.

Liabilities of parties.

53. Funds in hands of drawee.

SEC.
54. Liability of acceptor.
55. Liability of drawer or indorser.
56. Stranger signing bill liable as indorser.
57. Measure of damages against parties to dishonored bill.
58. Transferrer by delivery and transferee.

Discharge of bill.

59. Payment in due course.
60. Banker paying demand draft whereon indorsement is forged.
61. Acceptor the holder at maturity.
62. Express waiver.
63. Cancellation.
64. Alteration of bill.

Acceptance and payment for honor.

65. Acceptance for honor supra protest
66. Liability of acceptor for honor.
67. Presentment to acceptor for honor,
68. Payment for honor supra protest.

Lost instruments.

69. Holder's right to duplicate of lost bill.
70. Action on lost bill.

Bill in a set.

71. Rules as to sets.

Conflict of laws.

SEC.
72. Rules where laws conflict.

PART III.—CHECKS ON A BANKER.

73. Check defined.
74. Presentment of check for payment.
75. Revocation of banker's authority.
76. Negotiability may be restricted.

PART IV.- PROMISSORY NOTES.

77. Promissory note defined.
78. Delivery necessary.
79. Joint and several notes.
80. Note payable on demand.
81. Presentment of note for payment.
82. Liability of maker.
83. Application of Part II to notes.

PART V.—SUPPLEMENTARY.

84. Good faith.
85. Signature.
86. Computation of time.
87. When noting equivalent to protest.
88. Protest when notary not accessible.
89. Bills of lading, warehouse receipts, and orders for property.
90. Advances of money thereon protected.
91. Insurance policies on property in transit.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, in words and figures following, that is to say:

PART I.—PRELIMINARY.

SECTION 1. That to provide for the general welfare of the United States, and to carry into execution more fully than heretofore the power to regulate commerce among the several States, and to promote the security and efficiency of the national banks in their commercial transactions, all bills of exchange, promissory notes, checks on banks or bankers, and other negotiable instruments purporting to have been made in one of the United States, or a Territory thereof, or the District of Columbia, and payable in any other State, Terri-

tory, or country, are hereby declared to be means and instruments of commerce among the several States, and all such bills, notes, checks, and instruments made or dated on or after the date of the approval of this act shall be governed exclusively by the provisions thereof; and all laws or parts of laws of the several States in any wise inconsistent with the provisions of this act are hereby suspended.

SEC. 2. That this act may be cited as the bills of exchange act, eighteen hundred and eighty-four.

In this act, unless the context otherwise requires,

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Banker" includes a body of persons, whether incorporated or not, who carry on the business of banking.

"Bankrupt" includes any person whose estate is vested in a trustee or assignee under the law for the time being in force relating to bankruptcy or insolvency.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Issue" means the first delivery of a bill or note, complete in form to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

PART II.—BILLS OF EXCHANGE.

FORM AND INTERPRETATION.

SEC. 3. (1) That a bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable

future time a sum certain in money to or to the order of a specified person, or to bearer.

(2) An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange.

(3) An order to pay out of a particular fund is not unconditional within the meaning of this section; but an unqualified order to pay, coupled with (a) an indication of a particular fund out of which the drawee is to reimburse himself, or a particular account to be debited with the amount, or (b) a statement of the transaction which gives rise to the bill, is unconditional.

(4) A bill is not invalid by reason—

(a) That it is not dated;

(b) That it does not specify the value given, or that any value has been given therefor;

(c) That it does not specify the place where it is drawn or the place where it is payable;

(d) That it provides for costs, expenses, or counsel fees in case of suit.

SEC. 4. (1) That an inland bill is a bill which is or on the face of it purports to be (a) both drawn and payable within the United States or (b) drawn within the United States upon some person resident therein. Any other bill is a foreign bill.

For the purposes of this act the words "United States" include the Territories thereof and the District of Columbia.

(2) Unless the contrary appear on the face of the bill the holder may treat it as an inland bill.

SEC. 5. (1) That a bill may be drawn payable to, or to the order of, the drawer; or it may be drawn payable to, or to the order of, the drawee.

(2) Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person or a person not having the capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or as a promissory note.

SEC. 6. (1) That the drawee must be named or otherwise indicated in a bill with reasonable certainty.

(2) A bill may be addressed to two or more drawees, whether they are partners or not, but an order addressed to two drawees in the alternative or to two or more drawees in succession is not a bill of exchange.

SEC. 7. (1) That where a bill is not payable to bearer, the payee must be named or otherwise indicated therein with reasonable certainty.

(2) A bill may be made payable to two or more payees jointly, or it may be made payable in the alternative to one of two or one or some or several payees. A bill may also be made payable to the holder of an office for the time being.

(3) Where the payee is a fictitious or non-existing person the bill may be treated as payable to bearer.

SEC. 8. (1) That when a bill contains words prohibiting transfer, or indicating an intention that it should not be transferable, it is valid as between the parties thereto, but is not negotiable.

(2) A negotiable bill may be payable either to order or to bearer.

(3) A bill is payable to bearer which is expressed to be so payable, or on which the only or last indorsement is an indorsement in blank.

(4) A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a particular person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable.

(5) Where a bill, either originally or by indorsement, is expressed to be payable to the order of a specified person, and not to him or his order, it is nevertheless payable to him or his order at his option.

SEC. 9. (1) That the sum payable by a bill is a sum certain within the meaning of this act, although it is required to be paid—

(a) With interest.

(b) By stated installments.

(c) By stated installments, with a provision that upon default in payment of any installment the whole shall become due.

(d) According to an indicated rate of exchange or according to a rate of exchange to be ascertained as directed by the bill.

(2) Where the sum payable is expressed in words and also in figures, and there is a discrepancy between the two, the sum denoted by the words is the amount payable.

(3) Where a bill is expressed to be payable with interest, unless the instrument otherwise provides, interest runs from

the date of the bill, and if the bill is undated, from the issue thereof. Interest shall be computed at the rate of six per centum per annum.

SEC. 10. (1) That a bill is payable on demand—

(a) Which is expressed to be payable on demand, or at sight, or on presentation; or

(b) In which no time for payment is expressed.

(2) Where a bill is accepted or indorsed when it is overdue, it shall, as regards the acceptor who so accepts, or any indorser who so indorses it, be deemed a bill payable on demand.

SEC. 11. That a bill is payable at a determinable future time within the meaning of this act which is expressed to be payable—

(1) At a fixed period after date or sight.

(2) On or at a fixed period after the occurrence of a specified event which is certain to happen, though the time of happening may be uncertain.

An instrument expressed to be payable on a contingency is not a bill, and the happening of the event does not cure the defect. A privilege of paying the bill before maturity shall not invalidate it.

SEC. 12. That where a bill expressed to be payable at a fixed period after date is issued undated, or where the acceptance of a bill payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the bill shall be payable accordingly: *Provided*, That (1) where the holder in good faith and by mistake inserts a wrong date, and (2) in every case where a wrong date is inserted, if the bill subsequently comes into the hands of a holder in due course the bill shall not be avoided thereby, but shall operate and be payable as if the date so inserted had been the true date.

SEC. 13. (1) That where a bill or an acceptance or any indorsement on a bill is dated, the date shall, unless the contrary be proved, be deemed to be the true date of the drawing, acceptance, or indorsement, as the case may be.

(2) A bill is not invalid by reason only that it is antedated or postdated, or that it bears date on a Sunday.

SEC. 14. That where a bill is not payable on demand, the day on which it falls due is determined as follows:

(1) Three days, called days of grace, are, in every case where the bill itself does not otherwise provide, added to the

time of payment as fixed by the bill, and the bill is due and payable on the last day of grace: *Provided*, That—

(a) When the last day of grace falls on Sunday, Christmas Day, January first, July fourth, or a day appointed by Executive proclamation as a public fast or thanksgiving day, the bill is, except in the case hereinafter provided for, due and payable on the preceding business day.

(b) When the last day of grace is a bank holiday, or is a Sunday, and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day.

(2) Where a bill is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run and by including the day of payment.

(3) Where a bill is payable at a fixed period after sight, the time begins to run from the date of the acceptance if the bill be accepted, and from the date of noting or protest if the bill be noted or protested for non-acceptance or for non-delivery.

(4) The term "month" in a bill means calendar month.

SEC. 15. That the drawer of a bill and any indorser may insert therein the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may think fit.

SEC. 16. That the drawer of a bill and any indorser, may insert therein an express stipulation:

(1) Negativing or limiting his own liability to the holder;

(2) Waiving as regards himself some or all of the holder's duties.

SEC. 17. (1) That the acceptance of a bill is the signification by the drawee of his assent to the order of the drawer.

(2) An acceptance is invalid unless it complies with the following conditions, namely:

(a) It must be written on the bill and be signed by the drawee. The mere signature of the drawee without additional words is sufficient.

(b) It must not express that the drawee will perform his promise by any other means than the payment of money.

SEC. 18. That a bill may be accepted:

(1) Before it has been signed by the drawer, or while otherwise incomplete.

(2.) When it is overdue or after it has been dishonored by a previous refusal to accept, or by non-payment.

(3) When a bill payable after sight is dishonored by non-acceptance, and the drawee subsequently accept it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of first presentment to the drawee for acceptance.

SEC. 19. (1) That an acceptance is either (a) general or (b) qualified.

(2) A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

In particular an acceptance is qualified which is:

(a) Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

(b) Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(c) Local, that is to say, an acceptance to pay only at a particular specified place.

An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only, and not elsewhere.

(d) Qualified as to time.

(e) The acceptance of some one or more of the drawees, but not of all.

SEC. 20. (1) That where a simple signature on a blank stamped paper is delivered by the signer in order that it may be converted into a bill, it operates as a *prima facie* authority to fill it up as a complete bill for any amount the stamp will cover, using the signature for that of the drawer, or the acceptor, or an indorser; and in like manner when a bill is wanting in any material particular the person in possession of it has a *prima facie* authority to fill up the omission in any way he thinks fit.

(2) In order that any such instrument when completed may be enforceable against any person who became a party thereto prior to its completion, it must be filled up within a reasonable time, and strictly in accordance with the authority given. Reasonable time for this purpose is a question of fact: *Provided*, That if any such instrument after completion is

negotiated to a holder in due course it shall be valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up within a reasonable time and strictly in accordance with the authority given.

SEC. 21. (1) That every contract on a bill, whether it be the drawer's, the acceptor's, or an indorser's, is incomplete and revocable, until delivery of the instrument in order to give effect thereto: *Provided*, That where an acceptance is written on a bill, and the drawee gives notice to or according to the directions of the person entitled to the bill that he has accepted it, the acceptance then becomes complete and irrevocable.

(2) As between immediate parties, and as regards a remote party other than a holder in due course, the delivery—

(a) In order to be effectual must be made either by or under the authority of the party drawing, accepting, or indorsing, as the case may be;

(b) May be shown to have been conditional or for a special purpose only, and not for the purpose of transferring the property in the bill.

But if the bill be in the hands of a holder in due course a valid delivery of the bill by all parties prior to him so as to make them liable to him is conclusively presumed.

(3) Where a bill is no longer in the possession of a party who has signed it as drawer, acceptor, or indorser, a valid and unconditional delivery by him is presumed until the contrary is proved.

CAPACITY AND AUTHORITY OF PARTIES.

SEC. 22. (1) That capacity to incur liability as a party to a bill is coextensive with capacity to contract: *Provided*, That nothing in this section shall enable a corporation to make itself liable as drawer, acceptor, or indorser of a bill unless it is competent to it so to do under the law for the time being in force relating to corporations, whether public or private.

(2) Where a bill is drawn or indorsed by an infant, minor, or corporation having no capacity or power to incur liability on a bill, the drawing or indorsement entitles the holder to receive payment of the bill, and to enforce it against any other party thereto, and against any assets received and held on account thereof by the incompetent party.

SEC. 23. That no person is liable as drawer, indorser, or acceptor of a bill who has not signed it as such: *Provided*, That—

(1) Where a person signs a bill in a trade or assumed name, he is liable thereon as if he had signed it in his own name.

(2) The signature of the name of a firm is equivalent to the signature by the person so signing of the names of all persons liable as partners in that firm.

SEC. 24. That subject to the provisions of this act, where a signature on a bill is forged or placed thereon without the authority of the person whose signature it purports to be, the forged or unauthorized signature is wholly inoperative, and no right to retain the bill or to give a discharge therefor or to enforce payment thereof against any party thereto can be acquired through or under that signature, unless the party against whom it is sought to retain or enforce payment of the bill is precluded by negligence or other good cause from setting up the forgery or want of authority: *Provided*, That nothing in this section shall affect the ratification of an unauthorized signature not amounting to a forgery.

SEC. 25. That a signature by procuration operates as notice that the agent has but a limited authority to sign, and the principal is only bound by such signature if the agent in so signing was acting within the actual limits of his authority. If the agent sign without authority from the principal, the agent himself shall be bound.

SEC. 26. (1) That where a person signs a bill as drawer, indorser, or acceptor, and adds words to his signature, indicating that he signs for or on behalf of a principal, or in a representative character, he is not personally liable thereon, except as above stated; and the mere addition to his signature of words describing him as an agent, or as filling a representative character, shall exempt him from personal liability, unless it shall otherwise appear that the intention is to bind the person making the signature.

(2) In determining whether the signature on a bill is that of the principal or that of the agent by whose hand it is written, the construction most favorable to the liability of the principal shall be adopted.

THE CONSIDERATION FOR A BILL.

SEC. 27. (1) That valuable consideration for a bill may be constituted by—

(a) Any consideration sufficient to support a simple contract;

(b) An antecedent debt or liability. Such a debt or liability is deemed valuable consideration whether the bill is payable on demand or at a future time.

(2) Where value has at any time been given for a bill the holder is deemed to be a holder for value as regards the acceptor and all parties to the bill who became parties prior to such time.

(3) Where the holder of a bill has a lien on it, arising either from contract or by implication of law, he is deemed to be a holder for value to the extent of the sum for which he has a lien.

SEC. 28. (1) That an accommodation party to a bill is a person who has signed a bill as drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person.

(2) An accommodation party is liable on the bill to a holder for value; and it is immaterial whether, when such holder took the bill, he knew such party to be an accommodation party or not.

SEC. 29. (1) That a holder in due course is a holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely:

(a) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact.

(b) That he took the bill in good faith for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it.

(2) In particular the title of a person who negotiates a bill is defective within the meaning of this act when he obtained the bill, or the acceptance thereof, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

(3) A holder (whether for value or not) who derives his title to a bill through a holder in due course, and who is not himself a party to any fraud or illegality affecting it, has all the rights of that holder in due course as regards the acceptor and all parties to the bill prior to that holder.

SEC. 30. (1) That every party whose signature appears on

a bill is *prima facie* deemed to have become a party thereto for value.

(2) Every holder of a bill is *prima facie* deemed to be a holder in due course; but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with fraud, duress, or force and fear, or illegality, the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged fraud or illegality, value has in good faith been given for the bill.

NEGOTIATION OF BILLS.

SEC. 31. (1) That a bill is negotiated when it is transferred from one person to another in such a manner as to constitute the transferee the holder of the bill.

(2) A bill payable to bearer is negotiated by delivery.

(3) A bill payable to order is negotiated by the indorsement of the holder completed by delivery.

(4) Where the holder of a bill payable to his order transfers it for value without indorsing it, the transfer gives the transferee such title as the transferrer had in the bill, and the transferee in addition acquires the right to have the indorsement of the transferrer.

(5) Where any person is under obligation to indorse a bill in a representative capacity, he may indorse the bill in such terms as to negative personal liability.

SEC. 32. That an indorsement in order to operate as a negotiation must comply with the following conditions, namely:

(1) It must be written on the bill itself and be signed by the indorser. The simple signature of the indorser on the bill, without additional words, is sufficient.

An indorsement written on an allonge, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognized, is deemed to be written on the bill itself.

(2) It must be an indorsement of the entire bill. A partial indorsement, that is to say, an indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the bill to two or more indorsees severally, does not operate as a negotiation of the bill.

(3) Where a bill is payable to the order of two or more payees or indorsees who are not partners all must indorse,

unless the one indorsing has authority to indorse for the others.

(4) Where, in a bill payable to order, the payee or indorsee is wrongly designated, or his name is misspelt, he may indorse the bill as therein described, adding, if he think fit, his proper signature.

(5) Where there are two or more indorsements on a bill, each indorsement is deemed to have been made in the order in which it appears on the bill, until the contrary is proved.

(6) An indorsement may be made in blank or special. It may also contain terms making it restrictive, and may exclude any recourse on or personal liability of the indorser.

SEC. 33. That where a bill purports to be indorsed conditionally the condition may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not.

SEC. 34. (1) That an indorsement in blank specifies no indorsee, and a bill so indorsed becomes payable to bearer.

(2) A special indorsement specifies the person to whom, or to whose order, the bill is to be payable.

(3) The provisions of this act relating to a payee apply with the necessary modifications to an indorsee under a special indorsement.

(4) When a bill has been indorsed in blank, any holder may convert the blank indorsement into a special indorsement by writing above the indorser's signature a direction to pay the bill to or to the order of himself or some other person.

SEC. 35. (1) That an indorsement is restrictive which prohibits the further negotiation of the bill or which expresses that it is a mere authority to deal with the bill as thereby directed and not a transfer of the ownership thereof, as, for example, if a bill be indorsed "Pay D only," or "Pay D for the account of X," or "Pay D or order for collection."

(2) A restrictive indorsement gives the indorsee the right to receive payment of the bill and to sue any party thereto that his indorser could have sued, but gives him no power to transfer his rights as indorsee unless it expressly authorize him to do so.

(3) Where a restrictive indorsement authorizes further

transfer, all subsequent indorsees take the bill with the same rights and subject to the same liabilities as the first indorsee under the restrictive indorsement.

SEC. 36. (1) That where a bill is negotiable in its origin it continues to be negotiable until it has been (a) restrictively indorsed or (b) discharged by payment or otherwise.

(2) Where an overdue bill is negotiated, it can only be negotiated subject to any defect of title affecting it at its maturity, and thenceforward no person who takes it can acquire or give a better title than that which the person from whom he took it had.

(3) A bill payable on demand is deemed to be overdue within the meaning and for the purposes of this section when it appears on the face of it to have been in circulation for an unreasonable length of time. What is an unreasonable length of time for this purpose is a question of fact, but no time less than one year shall be deemed unreasonable.

(4) Except where an indorsement bears date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill was overdue.

(5) Where a bill which is not overdue has been dishonored, any person who takes it with notice of the dishonor takes it subject to any defect of title attaching thereto at the time of dishonor, but nothing in this subsection shall affect the rights of a holder in due course.

SEC. 37. That where a bill is negotiated back to the drawer, or to a prior indorser or to the acceptor, such party may, subject to the provisions of this act, reissue and further negotiate the bill, but he is not entitled to enforce payment of the bill against any intervening party to whom he was previously liable.

SEC. 38. That the rights and powers of the holder of a bill are as follows:

(1) He may sue on the bill in his own name.

(2) Where he is a holder in due course, he holds the bill free from any defect of title of prior parties, as well as from mere personal defenses available to prior parties among themselves, and may enforce payment against all parties liable on the bill.

(3) Where his title is defective (a) if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill, and (b) if he obtains payment of the bill the person who pays him in due course gets a valid discharge for the bill.

(4) All parties to a bill may be sued together in equity, and all their rights, interests, and liabilities adjusted in a single suit. Costs, expenses, and counsel fees shall be adjudged as justice may require.

GENERAL DUTIES OF THE HOLDER.

SEC. 39. (1) That where a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the instrument.

(2) Where a bill expressly stipulates that it shall be presented for acceptance, or where a bill is drawn payable elsewhere than at the residence or place of business of the drawee, it must be presented for acceptance before it can be presented for payment.

(3) In no other case is presentment for acceptance necessary in order to render liable any party to the bill.

(4) Where the holder of a bill, drawn payable elsewhere than at the place of business or residence of the drawee, has not time, with the exercise of reasonable diligence, to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused, and does not discharge the drawer and indorsers.

SEC. 40. (1) That subject to the provisions of this act, when a bill payable after sight is negotiated, the holder must either present it for acceptance or negotiate it within a reasonable time.

(2) If he do not do so, the drawer and all indorsers prior to that holder are discharged.

(3) In determining what is a reasonable time within the meaning of this section, regard shall be had to the nature of the bill, the usage of trade with respect to similar bills, and the facts of the particular case.

SEC. 41. (1) That a bill is duly presented for acceptance which is presented in accordance with the following rules:

(a) The presentment must be made by or on behalf of the holder to the drawee, or to some person authorized to accept or refuse acceptance on his behalf, at a reasonable hour on a business day and before the bill is overdue.

(b) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all,

unless one has authority to accept for all, then presentment may be made to him only.

(c) Where the drawee is dead, presentment may be made to his personal representative.

(d) Where the drawee is bankrupt, presentment may be made to him or to his trustee.

(e) Where authorized by agreement or usage, a presentment through the post-office is sufficient.

(2) Presentment in accordance with these rules is excused, and a bill may be treated as dishonored by non-acceptance—

(a) Where the drawee is dead or bankrupt, or is a fictitious person or a person not having capacity to contract by bill.

(b) Where, after the exercise of reasonable diligence, such presentment cannot be effected.

(c) Where, although the presentment has been irregular, acceptance has been refused on some other ground.

(3) The fact that the holder has reason to believe that the bill, on presentment, will be dishonored, does not excuse presentment.

SEC. 42. (1) That when a bill is duly presented for acceptance, and is not accepted within the customary time, the person presenting it must treat it as dishonored by non-acceptance. If he do not, the holder shall lose his right of recourse against the drawer and indorsers.

SEC. 43. (1) That a bill is dishonored by non-acceptance—

(a) When it is duly presented for acceptance, and such an acceptance as is prescribed by this act is refused or cannot be obtained; or

(b) When presentment for acceptance is excused and the bill is not accepted.

(2) Subject to the provisions of this act, when a bill is dishonored by non-acceptance an immediate right of recourse against the drawer and indorsers accrues to the holder, and no presentment for payment is necessary.

SEC. 44. (1) That the holder of a bill may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance may treat the bill as dishonored by non-acceptance.

(2) Where a qualified acceptance is taken and the drawer or an indorser has not expressly or impliedly authorized the holder to take a qualified acceptance, or does not subsequently assent thereto, such drawer or indorser is discharged from his liability on the bill.

The provisions of this subsection do not apply to a partial acceptance, whereof due notice has been given; where a foreign bill has been accepted as to part, it must be protested as to the balance.

(3) When the drawer or indorser of a bill receives notice of a qualified acceptance, and does not within a reasonable time express his dissent to the holder, he shall be deemed to have assented thereto.

SEC. 45. That subject to the provisions of this act a bill must be duly presented for payment. If it be not so presented the drawer and indorsers shall be discharged.

A bill is duly presented for payment which is presented in accordance with the following rules:

(1) Where the bill is not payable on demand presentment must be made on the day it falls due.

(2) Where the bill is payable on demand, then, subject to the provisions of this act, presentment must be made within a reasonable time after its issue in order to render the drawer liable, and within a reasonable time after its indorsement in order to render the indorser liable.

In determining what is a reasonable time, regard shall be had to the nature of the bill, the usage of trade with regard to similar bills, and the facts of the particular case.

(3) Presentment must be made by the holder or by some person authorized to receive payment on his behalf at a reasonable hour on a business day, at the proper place as hereinafter defined, either to the person designated by the bill as payer, or to some person authorized to pay or refuse payment on his behalf if with the exercise of reasonable diligence such person can there be found.

(4) A bill is presented at the proper place—

(a) Where a place of payment is specified in the bill and the bill is there presented.

(b) Where no place of payment is specified, but the address of the drawee or acceptor is given in the bill, and the bill is there presented.

(c) Where no place of payment is specified and no address given, and the bill is presented at the drawee's or acceptor's place of business if known, and if not, at his ordinary residence if known.

(d) In any other case if presented to the drawee or acceptor wherever he can be found, or if presented at his last known place of business or residence.

(5) Where a bill is presented at the proper place, and after the exercise of reasonable diligence no person authorized to pay or refuse payment can be found there, no further presentment to the drawee or acceptor is required.

(6) Where a bill is drawn upon, or accepted by two or more persons who are not partners, and no place of payment is specified, presentment must be made to them all.

(7) Where the drawee or acceptor of a bill is dead, and no place of payment is specified, presentment must be made to a personal representative, if such there be, and with the exercise of reasonable diligence he can be found.

(8) Where authorized by agreement or usage a presentment through the post-office is sufficient.

SEC. 46. (1) That delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate presentment must be made with reasonable diligence.

(2) Presentment for payment is dispensed with:

(a) Where, after the exercise of reasonable diligence presentment, as required by this act, cannot be effected. The fact that the holder has reason to believe that the bill will, on presentment, be dishonored, does not dispense with the necessity for presentment.

(b) Where the drawee is a fictitious person.

(c) As regards the drawer, where the drawee or acceptor is not bound, as between himself and the drawer, to accept or pay the bill, and the drawer has no reason to believe that the bill would be paid if presented.

(d) As regards an indorser, where the bill was accepted or made for the accommodation of that indorser, and he has no reason to expect that the bill would be paid if presented.

(e) By waiver of presentment, express or implied.

SEC. 47. (1) That a bill is dishonored by non-payment—(a) When it is duly presented for payment and payment is refused or cannot be obtained; or (b) When presentment is excused and the bill is overdue and unpaid.

(2) Subject to the provisions of this act, when a bill is dishonored by non-payment, an immediate right of recourse against the drawer and indorsers accrues to the holder.

SEC. 48. That subject to the provisions of this act, when a bill has been dishonored by non-acceptance or by non-pay-

ment, notice of dishonor must be given to the drawer and each indorser, and any drawer or indorser to whom such notice is not given is discharged: *Provided*, That—

(1) Where a bill is dishonored by non-acceptance, and notice of dishonor is not given, the rights of a holder in due course subsequent to the omission, shall not be prejudiced by the omission.

(2) Where a bill is dishonored by non-acceptance and due notice of dishonor is given, it shall not be necessary to give notice of a subsequent dishonor by non-payment unless the bill shall in the meantime have been accepted.

SEC. 49. That notice of dishonor in order to be valid and effectual must be given in accordance with the following rules:

(1) The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who, at the time of giving it, is himself liable on the bill.

(2) Notice of dishonor may be given by an agent either in his own name, or in the name of any party entitled to give notice, whether that party be his principal or not.

(3) Where the notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given.

(4) Where notice is given by or on behalf of an indorser entitled to give notice as hereinbefore provided, it inures for the benefit of the holder and all indorsers subsequent to the party to whom notice is given.

(5) The notice may be given in writing or by personal communication, and may be given in any terms which sufficiently identify the bill, and intimate that the bill has been dishonored by non-acceptance or non-payment.

(6) The return of a dishonored bill to the drawer or an indorser is, in point of form, deemed a sufficient notice of dishonor.

(7) A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the bill shall not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

(8) Where notice of dishonor is required to be given to any person, it may be given either to the party himself or to his agent in that behalf.

(9) Where the drawer or indorser is dead, and the party giving notice knows it, the notice must be given to a personal representative if such there be, and with the exercise of reasonable diligence he can be found.

(10) Where the drawer or indorser is bankrupt, notice may be given either to the party himself or to the trustee.

(11) Where there are two or more drawers or indorsers who are not partners, notice must be given to each of them, unless one of them has authority to receive such notice for the others.

(12) The notice may be given as soon as the bill is dishonored, and must be given within a reasonable time thereafter. In the absence of special circumstances notice is not deemed to have been given within a reasonable time unless—

(a) Where the person giving and the person to receive notice reside in the same place, the notice is given or sent off in time to reach the latter on the day after the dishonor of the bill.

(b) Where the person giving and the person to receive notice reside in different places, the notice is sent off on the day after the dishonor of the bill, if there be a post at a convenient hour on that day, and if there be no such post on that day then by the next post thereafter.

(13) Where a bill when dishonored is in the hands of an agent, he may either himself give notice to the parties liable on the bill, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

(14) Where a party to a bill receives due notice of dishonor, he has after the receipt of such notice the same period of time for giving notice to antecedent parties that the holder has after the dishonor.

(15) Where a notice of dishonor is duly addressed and posted, the sender is deemed to have given due notice of dishonor, notwithstanding any miscarriage by the post-office.

SEC. 50. (1) That delay in giving notice of dishonor is excused where the delay is caused by circumstances beyond the control of the party giving notice, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the notice must be given with reasonable diligence.

(2) Notice of dishonor is dispensed with—

(a) When, after the exercise of reasonable diligence, notice as required by this act cannot be given to or does not reach the drawer or indorser sought to be charged.

(b) By waiver express or implied. Notice of dishonor may be waived before the time of giving notice has arrived, or after the omission to give due notice.

(c) As regards the drawer in the following cases, namely: (1) Where drawer and drawee are the same person; (2) where the drawee is a fictitious person or a person not having capacity to contract; (3) where the drawer is the person to whom the bill is presented for payment; (4) where the drawee or acceptor is as between himself and the drawer under no obligation to accept or pay the bill; (5) where the drawer has countermanded payment.

(d) As regards the indorser in the following cases, namely: (1) where the drawee is a fictitious person or a person not having capacity to contract and the indorser was aware of the fact at the time he indorsed the bill; (2) where the indorser is the person to whom the bill is presented for payment; (3) where the bill was accepted or made for his accommodation.

SEC. 51. (1) That where an inland bill has been dishonored it may, if the holder think fit, be noted for non-acceptance or non-payment, as the case may be; but it shall not be necessary to note or protest any such bill in order to preserve the recourse against the drawer or indorser.

(2) Where a foreign bill, appearing on the face of it to be such, has been dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill, which has not been previously dishonored by non-acceptance, is dishonored by non-payment it must be duly protested for non-payment. If it be not so protested the drawer and indorsers are discharged. Where a bill does not appear on the face of it to be a foreign bill, protest thereof in case of dishonor is unnecessary.

(3) A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

(4) Subject to the provisions of this act, when a bill is noted or protested, it must be noted on the day of its dishonor. When a bill has been duly noted, the protest may be subsequently extended as of the day of the noting.

(5) Where the acceptor of a bill becomes bankrupt or insolvent, or suspends payment before it matures, the holder may

cause the bill to be protested for better security against the drawer and indorsers.

(6) A bill must be protested at the place where it is dishonored: *Provided*, That—

(a) When a bill is presented through the post-office, and returned by post dishonored, it may be protested at the place to which it is returned, and on the day of its return, if received during business hours; and if not received during business hours, then not later than the next business day.

(b) When a bill drawn payable at the place of business or residence of some person other than the drawee has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

(7) A protest must contain a copy of the bill, and must be signed by the notary making it, and must specify—

(a) The person at whose request the bill is protested.

(b) The place and date of protest, the cause or reason for protesting the bill, the demand made, and the answer given, if any, or the fact that the drawee or acceptor could not be found.

(8) Where a bill is lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

(9) Protest is dispensed with by any circumstance which would dispense with notice of dishonor. Delay in noting or protesting is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate the bill must be noted or protested with reasonable diligence.

SEC. 52 (1) That when a bill is accepted generally, presentment for payment is not necessary in order to render the acceptor liable.

(2) When by the terms of a qualified acceptance presentment for payment is required, the acceptor, in the absence of an express stipulation to that effect, is not discharged by the omission to present the bill for payment on the day that it matures.

(3) In order to render the acceptor of a bill liable it is not necessary to protest it, or that notice of dishonor should be given to him.

(4) Where the holder of a bill presents it for payment, he shall exhibit the bill to the person from whom he demands payment, and when a bill is paid the holder shall forthwith deliver it up to the party paying it.

LIABILITIES OF PARTIES.

SEC. 53. (1) That a bill, of itself, does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill who does not accept as required by this act is not liable on the instrument, unless it expressly provides that it shall operate as an assignment of the sum for which it is drawn in favor of the holder, from the time when the bill is presented to the drawee.

SEC. 54. That the acceptor of a bill, by accepting it—

(1) Engages that he will pay it according to the tenor of his acceptance.

(2) Is precluded from denying to a holder in due course—

(a) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill.

(b) In the case of a bill payable to drawer's order, the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement.

(c) In the case of a bill payable to the order of a third person, the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement.

SEC. 55. (1) That the drawer of a bill by drawing it—

(a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonored he will compensate the holder or any indorser who is compelled to pay it: *Provided,* That the requisite proceedings on dishonor be duly taken.

(b) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

(2) The indorser of a bill by indorsing it—

(a) Engages that on due presentment it shall be accepted and paid according to its tenor, and that if it be dishonored he will compensate the holder or a subsequent indorser who is compelled to pay it: *Provided,* That the requisite proceedings on dishonor be duly taken.

(b) Is precluded from denying to a holder in due course

the genuineness and regularity in all respects of the drawer's signature and all previous indorsements.

(c) Is precluded from denying to his immediate or a subsequent indorsee that the bill was at the time of his indorsement a valid and subsisting bill, and that he had then a good title thereto.

(d) An indorser may avoid personal liability by the words "without recourse" before his signature.

SEC. 56. That where a person signs a bill otherwise than as drawer or acceptor, he thereby incurs the liabilities of an indorser to a holder in due course.

SEC. 57. That where a bill is dishonored, the measure of damages, which shall be deemed to be liquidated damages, shall be as follows:

(1) The holder may recover from any party liable on the bill, and the drawer who has been compelled to pay the bill may recover from the acceptor, and an indorser who has been compelled to pay the bill may recover from the acceptor or from the drawer, or from a prior indorser—

(a) The amount of the bill.

(b) Interest thereon from the time of presentment for payment if the bill is payable on demand, and from the maturity of the bill in any other case.

(c) The expenses of noting, or, when protest is necessary and the protest has been extended, the expenses of protest.

(2) In the case of a bill which has been dishonored abroad, in lieu of the above damages, the holder may recover from the drawer or an indorser, and the drawer or an indorser who has been compelled to pay the bill may recover from any party liable to him, the amount of the re-exchange with interest thereon until the time of payment.

(3) Where by this act interest may be recovered as damages, such interest may, if justice require it, be withheld wholly or in part, and where a bill is expressed to be payable with interest at a given rate, interest as damages may or may not be given at the same rate as interest proper.

(4) In case of suit, counsel fees and other expenses may be allowed by the court.

SEC. 58. (1) That where the holder of a bill payable to bearer negotiates it by delivery without indorsing it, he is called a "transferrer by delivery."

(2) A transferrer by delivery is not liable on the instrument.

(3) A transferrer by delivery who negotiates a bill thereby

warrants to his immediate transferee being a holder for value that the bill is what it purports to be, that he has a right to transfer it, and that at the time of transfer he is not aware of any fact which renders it valueless.

DISCHARGE OF BILL.

SEC. 59. (1) That a bill is discharged by payment in due course by or on behalf of the drawee or acceptor. "Payment in due course" means payment made at or after the maturity of the bill to the holder thereof in good faith and without notice that his title to the bill is defective.

(2) Subject to the provisions hereinafter contained, when a bill is paid by the drawer or an indorser it is not discharged, but—

(a) Where a bill payable to, or to the order of, a third party is paid by the drawer, the drawer may enforce payment thereof against the acceptor, but may not reissue the bill.

(b) Where a bill is paid by an indorser, or where a bill payable to drawer's order is paid by the drawer, the party paying it is remitted to his former rights as regards the acceptor or antecedent parties, and he may, if he thinks fit, strike out his own and subsequent indorsements, and again negotiate the bill.

(3) Where an accommodation bill is paid in due course by the party accommodated the bill is discharged.

SEC. 60. That when a bill payable to order on demand is drawn on a banker, and the banker on whom it is drawn pays the bill in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the indorsement of the payee or any subsequent indorsement was made by or under the authority of the person whose indorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such indorsement has been forged or made without authority.

SEC. 61. That when the acceptor of a bill is or becomes the holder of it at or after its maturity, in his own right, the bill is discharged.

SEC. 62. (1) That when the holder of a bill at or after its maturity absolutely and unconditionally renounces his right against the acceptor the bill is discharged. The renunciation must be in writing, unless the bill is delivered up to the acceptor.

(2) The liabilities of any party to a bill may in like manner be renounced by the holder before, at, or after its maturity; but nothing in this section shall affect the rights of a holder in due course without notice of the renunciation.

SEC. 63. (1) That where a bill is intentionally canceled by the holder or his agent, and the cancellation is apparent thereon, the bill is discharged.

(2) In like manner any party liable on a bill may be discharged by the intentional cancellation of his signature by the holder or his agent. In such case any indorser who would have had a right of recourse against the party whose signature is canceled is also discharged.

(3) A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where a bill or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake, or without authority.

SEC. 64. (1) That where a bill or acceptance is materially altered without the assent of all parties liable on the bill, the bill is avoided except as against a party who has himself made, authorized, or assented to the alteration, and subsequent indorsers: *Provided*, That where a bill has been materially altered, but the alteration is not apparent, and the bill is in the hands of a holder in due course, such holder may avail himself of the bill as if it had not been altered, and may enforce payment of it according to its original tenor.

(2) In particular the following alterations are material, namely: Any alteration of the date, the sum payable, the time of payment, the place of payment, and where a bill has been accepted generally, the addition of a place of payment without the acceptor's assent.

ACCEPTANCE AND PAYMENT FOR HONOR.

SEC. 65. (1) That where a bill of exchange has been protested for dishonor by non-acceptance, or protested for better security, and is not overdue, any person, not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest, for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn.

(2) A bill may be accepted for honor for part only of the sum for which it is drawn.

(3) An acceptance for honor supra protest in order to be valid must—

(a) Be written on the bill, and indicate that it is an acceptance for honor.

(b) Be signed by the acceptor for honor.

(4) Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

(5) Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance, and not from the date of the acceptance for honor.

SEC. 66. (1) That the acceptor for honor of a bill by accepting it engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment and protested for non-payment, and that he receives notice of these facts.

(2) The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

SEC. 67. (1) That where a dishonored bill has been accepted for honor supra protest, or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor, or referee in case of need.

(2) Where the address of the acceptor for honor is in the same place where the bill is protested for non-payment, the bill must be presented to him not later than the day following its maturity; and where the address of the acceptor for honor is in some place other than the place where it was protested for non-payment, the bill must be forwarded not later than the day following its maturity for presentment to him.

(3) Delay in presentment or non-presentment is excused by any circumstance which would excuse delay in presentment for payment or non-presentment for payment.

(4) When a bill of exchange is dishonored by the acceptor for honor it must be protested for non-payment by him.

SEC. 68. (1) That where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn.

(2) Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill shall have the preference.

(3) Payment for honor supra protest, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honor which may be appended to the protest or form an extension of it.

(4) The notarial act of honor must be founded on a declaration made by the payer for honor, or his agent in that behalf, declaring his intention to pay the bill for honor, and for whose honor he pays.

(5) Where a bill has been paid for honor all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for and succeeds to both the rights and duties of, the holder as regards the party for whose honor he pays, and all parties liable to that party.

(6) The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor is entitled to receive both the bill itself and the protest. If the holder do not on demand deliver them up, he shall be liable to the payer for honor in damages.

(7) Where the holder of a bill refuses to receive payment supra protest, he shall lose his right of recourse against any party who would have been discharged by such payment.

LOST INSTRUMENTS.

SEC. 69. That where a bill has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again.

If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so by a short petition and order in equity.

SEC. 70. That in any action or proceeding upon a bill the court or a judge may order that the loss of the instrument shall not be set up, provided an indemnity be given to the satisfaction of the court or judge against the claims of any other person upon the instrument in question.

BILL IN A SET.

SEC. 71. (1) That where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill.

(2) Where the holder of a set indorses two or more parts to different persons, he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed as if the said parts were separate bills.

(3) Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders deemed the true owner of the bill; but nothing in this subsection shall affect the rights of a person who in due course accepts or pays the part first presented to him.

(4) The acceptance may be written on any part, and it must be written on one part only.

If the drawee accepts more than one part, and such accepted parts get into the hands of different holders in due course, he is liable on every such part as if it were a separate bill.

(5) When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereof.

(6) Subject to the preceding rules, where any one part of a bill drawn in a set is discharged by payment or otherwise, the whole bill is discharged.

CONFLICT OF LAWS.

SEC. 72. That where a bill drawn out of the United States is negotiated, accepted, or payable within the same, the rights, duties, and liabilities of the parties thereto are determined as follows:

(1) The validity of the bill as regards requisites in form is determined by the law of the place of issue, and the validity as regards requisites in form of the supervening contracts, such as acceptance, or indorsement, or acceptance supra protest, is determined by the law of the United States, *Provided*, That—

(a) Where a bill is issued out of the United States it is not

invalid by reason only that it is not stamped in accordance with the law of the place of issue.

(b) Where a bill, issued out of the United States, conforms, as regards requisites in form, to the law of the United States, it may, for the purpose of enforcing payment thereof, be treated as valid as between all persons who negotiate, hold, or become parties to it in the United States.

(2) Subject to the provisions of this act, the interpretation of the drawing, indorsement, acceptance, or acceptance supra protest of a bill, is determined by the law of the United States: *Provided*, That where an inland bill is indorsed in a foreign country, the indorsement shall, as regards the payer, be interpreted according to the law of the United States.

(3) The duties of the holder with respect to presentment for acceptance or payment and the necessity for or sufficiency of a protest or notice of dishonor, or otherwise, are determined by the law of the place where the act is done or the bill is dishonored.

(4) Where a bill is drawn out of but payable in the United States, and the sum payable is not expressed in the currency of the United States, the amount shall, in the absence of some express stipulation, be calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

(5) Where a bill is drawn in one country and is payable in another, the due date thereof is determined according to the law of the place where it is payable.

PART III.—CHECKS ON A BANKER.

SEC. 73. That a check is a bill of exchange drawn on a banker payable on demand. It operates after demand or notice as an assignment of so much of the fund as it covers, and the holder may sue in his own name. Except as otherwise provided in this Part, the provisions of this act applicable to a bill of exchange payable on demand, apply to a check.

SEC. 74. That subject to the provisions of this act—

(1) Where a check is not presented for payment within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the check

paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such check been paid.

(2) In determining what is a reasonable time regard shall be had to the nature of the instrument, the usage of trade and of bankers, and the facts of the particular case.

(3) The holder of such check as to which such drawer or person is discharged shall be a creditor in lieu of such drawer or person of such banker to the extent of such discharge, and entitled to recover the amount from him.

SEC. 75. That the duty and authority of a banker to pay a check drawn on him by his customer are determined by—

(1) Countermand of payment.

(2) Notice of the customer's death.

SEC. 76. That a check may be made not negotiable, or its negotiability may be restricted or conditional by proper words thereon.

PART IV.—PROMISSORY NOTES.

SEC. 77. (1) That a promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer.

(2) An instrument in the form of a note payable to maker's order is not a note within the meaning of this section unless and until it is indorsed by the maker.

(3) A note is not invalid by reason only that it contains also a pledge of collateral security with authority to sell or dispose thereof; nor by reason of providing for costs, expenses, or attorney's fees in case of suit.

(4) A note which is, or on the face of it purports to be, both made and payable within the United States is an inland note. Any other note is a foreign note.

SEC. 78. That a promissory note is inchoate and incomplete until delivery thereof to the payee or bearer.

SEC. 79. (1) That a promissory note may be made by two or more makers, and they may be liable thereon jointly, or jointly and severally, according to its tenor.

(2) Where a note runs "I promise to pay," and is signed

by two or more persons, it is deemed to be their joint and several note.

SEC. 80. (1) That where a note payable on demand has been indorsed, it must be presented for payment within a reasonable time of the indorsement. If it be not so presented the indorser is discharged.

(2) In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade, and the facts of the particular case.

(3) Where a note payable on demand is negotiated, it is not deemed to be overdue, for the purpose of affecting the holder with defects of title of which he had no notice by reason that it appears that a reasonable time for presenting it for payment has elapsed since its issue.

SEC. 81. (1) That where a promissory note is in the body of it made payable at a particular place, it must be presented for payment at that place in order to render the maker liable. In any other case, presentment for payment is not necessary in order to render the maker liable.

(2) Presentment for payment is necessary in order to render the indorser of a note liable.

(3) Where a note is in the body of it made payable at a particular place, presentment at that place is necessary in order to render an indorser liable; but when a place of payment is indicated by way of memorandum only, presentment at that place is sufficient to render the indorser liable, but a presentment to the maker elsewhere, if sufficient in other respects, shall also suffice.

SEC. 82. That the maker of a promissory note by making it—

(1) Engages that he will pay it according to its tenor.

(2) Is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse.

SEC. 83. (1) That, subject to the provisions in this part, and except as by this section provided, the provisions of this act relating to bills of exchange apply, with the necessary modifications, to promissory notes.

(2) In applying those provisions the maker of a note shall be deemed to correspond with the acceptor of a bill, and the first indorser of a note shall be deemed to correspond with the drawer of an accepted bill payable to drawer's order.

(3) The following provisions as to bills do not apply to notes, namely: Provisions relating to—

(a) Presentment for acceptance;
(b) Acceptance;
(c) Acceptance supra protest;
(d) Bills in a set.

(4) Where a foreign note is dishonored, protest thereof is unnecessary.

PART V.—SUPPLEMENTARY.

SEC. 84. That a thing is deemed to be done in good faith, within the meaning of this act, where it is in fact done honestly, whether it is done negligently or not. Fraud committed or attempted shall work a forfeiture of all rights of the guilty party.

SEC. 85. (1) That where by this act any instrument or writing is required to be signed by any person, it is not necessary that he should sign it with his own hand, but it is sufficient if his signature is written thereon by some other person by or under his authority.

(2) In the case of a corporation, where by this act any instrument or writing is required to be signed, it is sufficient if the instrument or writing be signed by the officer to whose province the instrument or writing belongs; and nothing in this section shall be construed as requiring the bill or note of a corporation to be under seal.

SEC. 86. That where by this act the time limited for doing any act or thing is less than three days, in reckoning time, non-business days are excluded.

"Non-business days" for the purpose of this act mean—

(a) Sunday, Christmas Day, January first, July fourth.

(b) A day appointed by proclamation as a public fast or thanksgiving day.

Any other day is a business day.

SEC. 87. That for the purposes of this act, where a bill or note is required to be protested within a specified time or before some further proceeding is taken, it is sufficient that the bill has been noted for protest before the expiration of the specified time or the taking of the proceeding; and the formal protest may be extended at any time thereafter as of the date of the noting.

SEC. 88. That where a dishonored bill or note is authorized or required to be protested, and the services of a notary can-

not be obtained at the place where the bill is dishonored, any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate, signed by them, attesting the dishonor of the bill, and the certificate shall in all respects operate as if it were a formal protest of the bill.

SEC. 89. That bills of lading, warehouse receipts, receipts or orders for specific property, and promises to pay a definite sum in a specified kind of personal property are hereby declared to be means and instruments of commerce, and shall be negotiable by indorsement and delivery, and shall be governed by the rules of law relating to promissory notes, so far as the same may be applicable thereto. Mortgages and trust deeds securing negotiable paper shall be negotiable in like manner.

Promissory notes or drafts, so made payable in personal property, shall be payable therein, at the market price thereof, in the place of payment, at noon, on the third day of grace after the day of maturity; and such payment may be made by warehouse receipt. If not so paid, the amount shall be payable in money.

SEC. 90. That any bank, banker, or other person who shall in good faith advance any money upon any bill of lading, warehouse receipt, or order for personal property, or upon any mortgage or deed of trust of real estate as collateral security for any bill of exchange, promissory note, or check, or otherwise in due course of trade or commerce, shall be protected to the extent of such advances in the property covered by such bill of lading, warehouse receipt, or order for personal property, or such mortgage or trust-deed, and the proceeds thereof, as fully as though such advances had been made in due course, and for value, on a bill of exchange or promissory note only before the maturity thereof.

SEC. 91. That all policies of insurance on property in or about its transportation in the course of commerce are also hereby declared to be means and instruments of commerce, and are hereby made negotiable in manner aforesaid.

REPORT OF SPECIAL COMMITTEE ON THE RELIEF OF CONGRESS FROM PRIVATE LEGISLATION.

To the American Bar Association:

In pursuance of the provisions of our Constitution, which requires the President to open each annual meeting with an address communicating the most noteworthy changes in the statute law by Congress and the several States during the preceding year, he called attention at our last meeting to the fact that out of the nine hundred and eighty-seven acts of the First Session of the Forty-ninth Congress which became laws, those of general interest to the whole country can be counted on the fingers of one hand. This fact induced the adoption of the following resolution:

"In view of the limited amount of general legislation enacted by the present Congress, as shown by the review of the President in his annual address made in pursuance of a provision of our Constitution, be it

"*Resolved*, That a special committee of five be appointed by the Chair to consider whether it be practicable to relieve Congress to any extent of the necessity for private legislation, with leave to report a method for accomplishing this purpose."

To add somewhat to the statistics given by our President for the purpose of illustrating the extent of this evil and its growth, we note that in the Forty-seventh Congress ten thousand seven hundred and four bills were introduced,

whereof seven hundred and seventy-two (or a little more than one in thirteen) became laws.

In the Forty-eighth Congress there were two thousand eight hundred and five bills introduced in the Senate and eight thousand six hundred and thirty-four in the House, making eleven thousand four hundred and forty-one bills which were introduced into that Congress, whereof nine hundred and sixty-six (or a little more than one in eleven) became laws. Of these nine hundred and sixty-six there were two hundred and eighty-four public and six hundred and eighty-two private laws. Of these six hundred and eighty-two private laws five hundred and eighty-eight were for pensions—thus leaving only ninety-four private of all kinds other than for pensions. Mr. Speaker Carlisle, adverting to this evil in his valedictory address on March 4th, 1885, said: "From the organization of the Government to the Twenty-fifth Congress, a period of fifty years, there were introduced into the House eight thousand seven hundred and seventy-seven bills and joint resolutions, while during the Forty-eighth Congress there were eight thousand six hundred and thirty-seven—*almost as many as during that half century.*"

In the Forty-ninth Congress there were introduced into the House eleven thousand five hundred and twenty-six bills and joint resolutions, whereof only one thousand four hundred and twenty-nine passed that body. In the Senate three thousand four hundred and seventy-six were introduced, whereof one thousand and twenty-eight passed that body. Total introduced into both houses, fifteen thousand and two.

Of this number, one thousand two hundred and eighty received the President's approval, one hundred and sixty became laws without his approval, and two were passed over his veto, making a total of one thousand four hundred and forty-two laws enacted, or less than one-tenth of the number introduced. Of these, four hundred and twenty-three were public and one thousand and nineteen private bills.

The evil is a very serious one. Its effects are very far-

reaching, and the necessity for remedying it is apparent to every thoughtful person. To find a means of practicable relief it is necessary to have before us the nature and origin of the evil itself.

In the first place, in order to a full understanding of the subject, it is necessary to correct a popular error which has taken possession of the public mind, and is spread abroad by oft-repeated statements unsupported by investigation. It is that there are hundreds or thousands of demands outstanding against the Government wherein parties have a just and legal cause of action if they could obtain a hearing. Nothing could be more incorrect.

Most of what are called private bills are for pensions. Of the others, some are for removal of political disabilities, appropriations to pay allowances by the accounting officers, granting privileges, and relieving public officers and their bondsmen from losses, as in the cases of Collectors Arthur and Robinson, of New York, and other subjects of like kind. But the great mass of private bills are nothing but appeals to the liberality and generosity of Congress for special favors or allowances in matters which Congress has by general law declared against, as in the case of destruction and damage to property by the army and navy in time of war, or which have long since been barred by the statutes of limitation, or which grow out of the torts of public officers, the general responsibility for which no government has ever assumed.

There is probably not one in a hundred, if there be one in a thousand, of the private bills introduced into Congress, which sets out a valid, legal cause of action against the United States, and none others could be sent to a court for adjudication.

Claimants who have demands founded on legal rights do not go to Congress with them, but bring suits at once in the Court of Claims.

The existing evil does not lie in the want of a forum in which to try substantial claims against the Government founded

on legal right. The Court of Claims has jurisdiction in law and equity of all claims founded upon any law of Congress, upon any regulation of any Executive Department, or upon any contract, express or implied, with the Government of the United States, or which may be referred to it by either house; also of all damages by vessels of the United States done by collision. Besides all of these cases, the Executive Department may refer any claim involving disputed facts or controverted questions of law, if the amount exceeds three thousand dollars or it presents a precedent for a class of cases. The Secretary of the Treasury may also refer similar cases upon the certificate of a comptroller or auditor.

The District Courts have concurrent jurisdiction in such cases up to one thousand, and the Circuit Courts from that sum up to ten thousand dollars, without a jury. But this jurisdiction has not been, and probably will not be, much invoked by claimants.

The methods of procedure and practice, less obstructed by technicalities, the better facilities for obtaining evidence on the call of the court from the Departments, where the proofs in almost all cases are chiefly to be found, the great knowledge which the judges acquire of the business of the Government in all its branches and in all the Departments, their experience in the trial of such cases, and the benefit of having the combined wisdom of five judges sitting in each case, instead of one, as in other courts, with the more extensive right of appeal to the Supreme Court, all tend to make it more desirable to bring actions against the United States in the Court of Claims.

From this very comprehensive jurisdiction of the Court of Claims it is apparent that there can be but a very limited number of claims which can, with any substantial reason or real propriety, be made to consume the time of Congress.

There are, of course, some claims which cannot well be covered by general laws, especially such as rest solely upon con-

siderations of public policy or benevolence, like pensions, bounties, and gratuities generally.

And there are some cases in which there may be reasonable and justifiable ground for waiving the law of limitation, and for such the recent act of Congress has made ample provision. By that act either house can refer any claim, legal or equitable, to the Court of Claims, who shall "report to such house the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question, whether there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question, whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy."

If there be any class of claims which Congress is willing to pay when properly investigated and proved, they should be provided for by general law, and then the Court of Claims would have jurisdiction of them under its general jurisdiction of claims "founded upon any law of Congress." Of such classes it seems to your Committee that there are two of a kindred nature.

By separate acts the Southern Claims Commission, long since expired by limitation, was authorized to investigate claims for stores and supplies furnished to or taken by the army in the States in rebellion, and the Quartermaster-General was authorized to investigate such claims arising in loyal States.

Both were required to report to Congress their findings, whether for or against each claim investigated, and a limitation of time was fixed beyond which all claims presented should be forever barred.

In cases reported adversely the claimants frequently want a hearing before the Committee on Claims, to whom all reports are referred. The Committee, availing themselves of the provisions of the Bowman Act, transmit such cases to

the Court of Claims for investigation and report as to the facts. These reports have to be again considered by the Committee, which causes an embarrassing delay.

We think that Congress ought to provide that the Court of Claims shall enter judgment for or against the claimant according to its findings, and thus bring the cases to an end and relieve the Court from reporting the facts to Congress, and the Committees and Congress from further consideration of them. This would be a great benefit to all concerned, and would furnish relief to Congress for some time to come and until all such claims shall have been disposed of, as they would be in a few years, from all further trouble in the matter. But this is only a temporary difficulty.

The great and paramount existing evil consists in the facility, looseness, objectless irresponsibility, and almost frivolity, of introducing bills into Congress. Any member may introduce a bill whenever he can get the floor, upon any subject, providing for the payment of money in any amount to anybody, with no reasons given and no questions asked. An aggressive claimant with an imaginary claim finds no difficulty in getting his bill introduced, frequently by two or three members, and in both houses in identically the same language, and thinks he is making progress.

The member is reported in the *Congressional Record* as having introduced such and such bills, and thinks he acquires the appearance of activity, especially to his constituents and the claimants.

The desire and ambition or habit of introducing private bills becomes a passion with some members. There are not a few instances of its being gratified even at the last day of the last session of a Congress, when, of course, it could not even be printed, much less referred and considered by a committee or acted upon by the House.

This serves to illustrate the fact that very many of these private bills are introduced without the slightest expectation or purpose of any action being taken upon them, but solely

to gratify the love of notoriety of the Representative or to flatter some ignorant constituent.

The real point, then, to be accomplished, as it seems to your Committee, is to present some plan by which a more responsible, thorough, and business-like method should be required in the introduction of private claims into Congress, free from the temptation to introduce them for mere notoriety, and accompanied with a full statement of facts.

They should invariably be presented, not by bill, but by petition, the method contemplated by the Committee for the redress of grievances. In that case they would go through the petition box to the Committee without being mentioned in the *Congressional Record* and without notoriety.

There they could be easily classified, referred to the Court of Claims, or reported upon adversely at once as on the face presenting no merits, or set down for hearing, as the Committee thought best.

In order to decide upon this classification advisedly, it is necessary that the facts upon which the claim rests should be set forth more fully in its presentation than is usually done in the bills for relief as introduced in Congress. The whole difficulty as to proceedings in Congress upon private claims seems to your Committee, after careful consideration, to be fully met and disposed of by a bill introduced in the Senate in December last by Hon. James L. Pugh, Senator from the State of Alabama.

The first section provides that all private claims shall be presented by petition, which shall disclose the basis of the claim and its history, and be verified.

This, of itself, would have a tendency to prevent the introduction of frivolous claims, because it would often be too apparent that a claimant could not state a reasonably plausible case, especially if he employed an attorney to draw his petition, as he naturally would do. To set out fully in a petition the demand and the ground upon which it rests is quite a different thing from writing a bill directing a certain sum of money to be paid to a claimant.

It would also enable the Committee at once to classify the claims referred to it, as is provided in the second section of the bill, and if they found that the case made by the petitioner himself is such a one as Congress alone can pass upon, they may at once proceed to its investigation and report such bill as in its judgment will meet the exigency.

If, on the other hand, it is a case which should be judicially investigated, either as to the facts or law, the Committee may transmit the case at once to the Court, where it will be tried according to the law in force and the system of procedure already established.

And if it is on its face without merit they could report adversely at once.

If the Court finds a legal cause of action established, it enters judgment therefor, otherwise it will report the facts found to Congress with such suggestions as may be proper as to what relief, if any, should be given.

The fifth section provides that no bill for private relief, except for pensions shall be presented to either house, except through a committee after a petition therefor has been considered and investigated by the Committee of the Court.

This would prevent the introduction of bills for the mere purpose of notoriety or for effect on constituents, and would no doubt reduce the number of private bills to a number easily disposed of.

In the opinion of your Committee the provisions of Senator Pugh's bill would remove all existing embarrassments over private claims in Congress and should have the indorsement of this Association, and it is so recommended. It is as follows:

49th Congress, 2d Session. Senate, 3033.

IN THE SENATE OF THE UNITED STATES,
December 21st, 1886.

Mr. Pugh introduced the following bill, which was read twice and referred to the Committee on Claims:

A Bill

Regulating the proceedings in Congress upon private claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: That every private claim, except for pensions, for which relief is sought from Congress shall be presented to the Senate or House of Representatives by printed petition, in which shall be fully set forth a plain and concise statement of the facts and circumstances upon which the claim is founded, giving time and place, free from argumentative and irrelevant matter, all payments made and all set-offs which ought to be allowed, what action thereon has been taken by any of the departments, if known, and what relief is sought, with the grounds therefor, and the same shall be verified by the oath of the claimants or one of them.

Sec. 2. That the petition shall be referred to a committee as other petitions are referred. If the committee are of opinion that the petition sets out a claim which, if sustained by the proof, would merit some action thereon by Congress, they may call for evidence and proceed to the investigation thereof themselves, or they may transmit the same to the Court of Claims for proofs and trial.

Sec. 3. That in the Court of Claims cases so transmitted shall be proceeded with as other cases are tried therein, and under such rules as have been or may be adopted. All laws relating to the method of procedure in said Court, so far as applicable, shall apply to such cases.

Sec. 4. That if upon the trial the Court finds that the claimants, or any of them, have proved a legal cause of action against the United States, which is not previously barred by law, judgment shall be entered accordingly, with right of appeal to the Supreme Court under existing laws and regulations. In all other cases the Court shall find the facts and report the same to Congress, with such suggestions as may be

deemed useful for the consideration of the committee in determining what relief, if any, should be given.

SEC. 5. That no bill for private relief, except for pension, shall be presented to the Senate or House of Representatives, except through a committee, after a petition therefor has been considered and investigated as aforesaid by such committee or by the Court of Claims.

SEC. 6. That reports from the Court of Claims shall be continued from Congress to Congress until acted upon.

WM. E. EARLE,
CHARLES BORCHERLING,
JOHN C. HASKELL,
E. B. SHERMAN,
AUSTEN G. FOX,
} *Committee.*

OBITUARIES.

DISTRICT OF COLUMBIA.

FLETCHER P. CUPPY.

FLETCHER P. CUPPY was born in the year 1828, on a farm a few miles east of Dayton, Montgomery County, Ohio.

After preparing for college, he entered the Delaware University, at Delaware, Ohio, from which he graduated.

He read law at Dayton, and was admitted to the Bar when he was twenty-three or twenty-four years old.

He established himself in the practice of the law at Dayton, and soon acquired quite a reputation in his profession, especially as a criminal lawyer. In this branch of the practice he was particularly successful. In 1858 he was elected as a Republican to the State Senate of Ohio for the term of two years, commencing January, 1860. He was a useful and highly respectable member of that body. During his term of service the late Civil War was commenced, and he participated fully with his fellow legislators in putting the great State of Ohio in financial and military position to sustain her share in the great struggle for the maintenance of the Union.

In 1863, or 1864, having met with considerable financial reverses on account of the dishonest transactions of a business partner, whom he had fully trusted, he removed to Washington City and took a position as a law clerk in the Post-office Department. In 1867 he was appointed Register of Deeds of the District of Columbia, which office he held

for several years. Before leaving the Register's office he opened an office for the practice of his profession in Washington.

His practice was mostly in Government business, but he tried some very important causes in the Supreme Court of the District and in the Supreme Court of the United States.

He was one of the counsel for Choctaw Indians in their great case against the Government, in which they recovered at the October term for 1866 between three and four millions of dollars.

Several prominent lawyers were associated with him in this case, but it is doing no injustice to his associates to say that their success was largely due to his painstaking and careful and intelligent aid.

Mr. Cuppy's death occurred March 30, 1887. He was found dead in his room at a hotel at the Hot Springs in Arkansas, whither he had gone for treatment for rheumatism.

Mr. Cuppy was an honest, honorable, and high-minded gentleman, as well as an excellent lawyer. He was universally esteemed by those who knew him best.

KENTUCKY.

WILLIAM PRESTON.

Within the past year the American Bar Association has been called upon to lament the death of those who added by their lives and acquirements lustre to our profession and honor to our country. Our late President, John W. Stevenson, of Kentucky; Judge Poland, of Vermont, Chairman of our Executive Committee, and William Preston, of Kentucky, have left unfilled places in the Bar Association. We realize this fact as it presses on our attention. We signalize our

appreciation of it by fitting tributes expressing those feelings which only such a cause could excite.

William Preston was a lawyer of distinguished ability, well trained, thoroughly instructed according to the system of legal preparation and study that was considered essential to the full equipment for the Bar.

He was of Irish descent. His great grandfather, John Preston, emigrated from the County Derry and settled in Virginia in 1739. The only son of John Preston was William Preston, a colonel in the Revolutionary War. He was wounded at Guilford and was killed in battle during the War for Independence.

He had controlled the entire list of surveys in Western Virginia and the entire region which now forms Kentucky. He had also received a military grant of one thousand acres of land near Louisville, Kentucky. This he left to his third son, William, who entered the regular army and served with credit under General Wayne and in the defense of the West. He subsequently married Caroline Hancock, the daughter of Colonel George Hancock, an officer in the Revolutionary War, a member of Congress, and a man greatly beloved in his State, who died in Fotheringay, Virginia, in 1820. In 1815 William Preston moved to Kentucky and settled on his estate, part of which is now the site of Louisville. William Preston was his son. He was most liberally and thoroughly educated at Augusta and St. Joseph's College in Kentucky, and at Yale College in New Haven. In his twenty-second year he graduated in the Law Department of Harvard University when that department was under the control and teaching of Story and Greenleaf. In 1840 he entered on the practice of law in Louisville, being associated with the Hon. William J. Graves, but devoted most of his time to the control of his large landed estate. During the Mexican War he served as Lieutenant-Colonel of the Fourth Regiment of Kentucky Volunteers. At the close of this war he returned to Louisville, where in 1849 he was elected as a member of

the Convention which framed the present Constitution of the State of Kentucky. In that body he took a prominent and most active part in the debates, opposing the "Native American" party. In the following year he was elected to the Legislature from Louisville. In 1851 he was elected to the State Senate, and in 1852 was elected to fill a vacancy in Congress. He resigned as State Senator to accept the position of Congressman. In 1853 he was re-elected to Congress and served the regular term. In 1852 he was Presidential Elector for the State at large, voting for Scott. He was a delegate to the Convention at Cincinnati in 1856 which nominated Buchanan for President of the United States. Mr. Buchanan as President appointed him in 1858 as Minister to the Court of Spain. In this capacity he served until South Carolina seceded, when he forwarded his resignation and returned to Kentucky. He joined General Albert Sidney Johnston at Bowling Green and served on his staff as Colonel until the battle of Shiloh, where Johnston fell, mortally wounded, and died in Colonel Preston's arms. Soon after this he was promoted to the position of Brigadier-General. He was engaged in all the leading battles of the South, especially in Tennessee and surrounding points. He was at Corinth and at the first siege of Vicksburg. As a division commander at Chickamauga he especially distinguished himself, and won a high reputation for personal bravery. In the winter of 1863 he was appointed Confederate States Minister to Mexico, but seeing that his mission there was useless, he requested to be recalled. He joined General E. Kirby Smith in Texas, and was promoted to the position of Major-General. In 1866 he moved with his family to Lexington, where he has ever since resided. In 1869 he served in the Legislature from Lexington. That was his last public service. As an accomplished man, a brave and skillful soldier, a polished diplomat, and an influential political leader and finished and eloquent orator, he was beloved and admired by all who knew him.

In 1840 he married Miss Margaret Wickliffe, the youngest daughter of Hon. Robert Wickliffe, of Lexington. His wife and six children survive him. His home was dedicated to the most enlarged hospitality, both sincere and profuse.

Such a life cannot go out and not leave a dark shadow. The gloom of grief too surely is manifest to be described. The Bar has reason for its regret. The country will find such a character worthy of its history.

Mr. Preston was born October 6, 1816, and died September 24, 1887.

His life was full of great responsibility. He filled important public trusts.

In his personal or public relations his individuality attracted, impressed, and dominated. Physically a superb type of the highest form of manhood, he had the rounded grace, dignity, accomplishments, and attainments of the gentleman. His wide culture, his exquisite taste, his large attainments, his ornate oratory, his unflagging industry, his lofty courtesy, and exceptional courage were but manifestations of his nature. Mr. Preston's speeches at the sessions of the Bar Association proved that his ability and beauty of expression in his later years, were powers unimpaired. With an unspotted name and a stainless character, he has gone to the judgment seat of God.

LOUISIANA.

JOHN H. KENNARD.

JOHN H. KENNARD, who died in New Orleans on the 2d of May, 1887, at the age of fifty, was a native of Kent County, Maryland. After a short course at Washington College he entered the University of Virginia, where he pursued elective studies in classics, ethics, and law, and where he took a conspicuous position in political studies and debate. About the year 1856 he went to Louisiana, and was gradu-

ated at the law school of the University of Louisiana in New Orleans, and entered upon the practice of his profession in that city. After the close of the late war he resumed practice in New Orleans and also engaged in cotton-planting. In November, 1872, he was appointed a Justice of the Supreme Court of Louisiana to fill a vacancy, and held the position until March, 1873. The opinions he delivered during this brief period are found in the twenty-fifth volume of the *Annual Reports* of that State.

In 1877 he was made President of the Board of Administrators of the University of Louisiana, and was most active and useful in extending and building up that institution—now consolidated with the Tulane University. During the same period he was a prominent member of the Chamber of Commerce of New Orleans, and contributed largely to the efforts of that body in those plans of public improvement which resulted in the construction of the jetties at the mouth of the Mississippi and in the building of railways to Texas.

As a lawyer, Judge Kennard did not feel much interest in technicalities nor in the mere literature of legal science. As an advocate he was plain, direct, and aggressive. And while attending with fidelity to his professional engagements, he always felt that he owed a duty to the State and city where he lived, and distinguished himself by his public spirit as well as by his private and domestic virtues.

MISSISSIPPI.

REUBEN O. REYNOLDS.

REUBEN O. REYNOLDS, a member of the American Bar Association, departed this life at his residence in Aberdeen, Mississippi, on the fourth day of September, 1887, after an illness of some weeks.

Colonel Reynolds was born in Madison, Morgan County,

Georgia, but at an early age removed with his parents to Aberdeen, Mississippi, where he has continuously resided since. Having acquired the rudiments of an education at home, he for a time attended Lagrange College, at Athens, Alabama, and afterward was graduated with the degree of B. A. from the University of Georgia, at Athens, in that State. Soon thereafter he matriculated in the Law Department of the University of Virginia, where, in the year 1855, he took the degree of Bachelor of Laws. Returning to his home at Aberdeen, he soon after married Miss Mollie English, whose premature death shortly after dissolved this connection.

In 1856 Colonel Reynolds associated himself in partnership in the practice of the law at Aberdeen, Mississippi, with William Gaston Henderson, afterward Chancellor of the then First or Coast District of the State of Mississippi, which partnership was dissolved after a continuance of some twelve or eighteen months.

On the first day of January, 1858, he formed a law partnership with Hon. Lock E. Houston, of Aberdeen, which was terminated March 1, 1887, by Judge Houston's accepting a position on the Bench.

In 1861 the subject of this notice entered the Confederate army, was elected first lieutenant of his company, and was promoted successively to the position of captain, major, and lieutenant-colonel of the Eleventh Mississippi Regiment of Infantry. He was twice wounded, once in the leg, at Sharpsburg, and once in the arm, at the last battle of Petersburg, thereby losing his left arm.

Early in 1865 he was married to Miss Sarah B. Young, by whom he had six children, who survive him.

In 1866 he was elected Reporter of the High Court of Errors and Appeals of Mississippi, and as such reported and edited the fortieth, forty-first, and forty-second volumes of Mississippi Reports.

In 1875 he was elected State Senator from his district,

which position he held for three successive sessions, twelve years, and was three times unanimously elected President *pro tempore* of that body.

As a lawyer Colonel Reynolds was remarkable for the variety of his general learning and his wonderful memory for adjudicated cases.

As an advocate he was fluent, ready, concise, and clear. He was never ambiguous, cloudy, or obscure. He had the faculty of making himself thoroughly understood, even to the dullest comprehension.

His success at the Bar was equal to his great abilities. He was a progressive, public-spirited citizen, and was always foremost in great public enterprises.

NEW HAMPSHIRE.

AUSTIN F. PIKE.

AUSTIN F. PIKE was born at Hebron, N. H., October 16, 1819, and was reared and educated in a section of the State widely celebrated for grandeur and beauty of scenery, and among a class of people noted for industry, intelligence, and honesty.

He attended school in Hebron until about fifteen years of age, and afterward at Plymouth, N. H., and Newbury, Vt., Academies, and was recognized as one of the most faithful and persevering students in those institutions. His school days, however, were full of discouragements, and were finally brought to a close by ill health. He reluctantly gave up his dearly cherished hope of a collegiate course of study and for a time abandoned even the expectation of a professional life. His health having improved somewhat, he commenced the study of law with Hon. George W. Nesmith, in Franklin, in 1841, and in 1844 was admitted to the Bar. He immediately

entered upon the active practice of his profession as the partner of Mr. Nesmith.

The firm of Nesmith & Pike was dissolved when Judge Nesmith was appointed to the Bench, and soon after Mr. Pike associated himself with Hon. Daniel Barnard, now Attorney General. The firm of Pike & Barnard continued for several years. Later, Mr. Pike formed a partnership with Hon. Isaac N. Blodget, now one of the Justices of the Supreme Court, and during the last years of his life he had, as a partner, his son-in-law, Frank N. Parsons.

From the beginning of his career his success was assured, and it was as a lawyer that he was best known in New Hampshire. His studies did not cease with his admission to the Bar; to the day of his death he was always to be found at his books when at his home or his office. Better than all else save his family he loved his profession. It was the taxmaster of his hours of labor and the mistress of his moments of pleasure. All his life he worked in his chosen field with a diligence that knew no relaxation. He was methodical, painstaking, and untiring, and when he had once prepared a case he was never surprised at any move of his opponents. He was connected with many of the most important civil and criminal cases of the State, and never junior or senior counsel associated with him put more labor into a case than he. The cause of his clients was his own. Popular clamor never moved him—he even seemed stronger when prejudice ran against his clients—and no consideration of personal interest could induce him to abandon a case when once enlisted.

He had a thoroughly legal mind, and his counsel was widely sought. Toward younger members of the Bar he was always considerate, and he was without envy as an associate. While he was not a natural orator, he was recognized as a strong advocate. Lacking the brilliancy that so often captivates a jury and obscures a cause, he was possessed of that positive earnestness that carries conviction.

It was, however, before the full bench that he displayed

his greatest power. The Supreme Court had great respect for his opinions, and no member of the Bar commanded better attention when he addressed the Court. There was scarcely a time within a quarter of a century of his death that he could not have been appointed to any vacancy that occurred on the Bench of his State had he desired the position.

While the law was his pride and his life work, he was not indifferent to politics. Early in life he took an interest in public questions. In 1850, 1851, and 1852, he represented Franklin in the lower branch of the Legislature. In 1857 and 1858 he was a member of the State Senate, the latter year having been chosen President of that branch, a position that corresponds to that of Lieutenant-Governor of other States.

In 1865 and 1866 he was returned to the House of Representatives from Franklin, and in 1886 was made Speaker of that body. He was a distinguished and efficient presiding officer. For three years he was Chairman of the Republican State Committee, and in 1856 was a delegate to the National Convention that nominated Fremont for the Presidency. In 1872 he was elected a member of Congress from the old Second District, and at the close of his term returned to his law practice, abandoning, as he supposed, politics forever. But in 1883 there came the memorable contest in the Legislature to elect a United States Senator, which ended by his election.

He entered the Senate in December, 1883, and served through the whole of the Forty-eighth Congress and during the greater part of the first session of the Forty-ninth. His membership was less than three years, yet in that time he had grown in the confidence and respect of that body as few men do. He was a tireless worker, accepting his appointed tasks with cheerfulness and discharging his duties conscientiously.

He was a member of two important committees, those of Claims and the District of Columbia, and at the reorganiza-

tion of the committees at the second session of the Forty-eighth Congress he was made Chairman of the former Committee. Its labors are immense, involving, as they do, the adjustment of thousands of claims barred by some technicality at the departments. The humblest individual, however, always received from him a patient hearing, and unquestionably his death was hastened by his devotion to his work. While he took little part in debate, his suggestions in the Committee and on the floor always carried weight. Had he lived to the close of his term, his influence in that body would have been second to but few. The feeling tributes of Senators Edmunds, Hoar, Dolph, and others, at the time the Senate took official recognition of his death, attest their respect and confidence in his integrity.

Mr. Pike was an early member of this Association, and, although circumstances prevented him from being present at its meetings, he took a lively interest in its proceedings, and believed in the great good that would result to the profession from its establishment.

The writer of this was a student in and was admitted to the Bar from Mr. Pike's office, and from his personal acquaintance and the enjoyment of his friendship is unwilling to allow the opportunity to pass without earnestly expressing his great respect and sincere attachment for him. He was a strong, true, and noble man.

We cannot better finish this brief tribute than by quoting the closing paragraphs of the eulogy by Hon. H. W. Blair, from New Hampshire, in the United States Senate, February 16, 1887:

"Senator Pike died at his home in Franklin, N. H., on the 8th day of October, 1886. He was buried with the highest honors of the nation and of the State, amid the lamentations of the people among whom he had lived and by whom he was loved so well, on the banks of the Merrimack, just where the cold and dancing waters of the Pennigewassett unite with those of the peaceful Winnepisaukee to form that wonderful

stream which, while like all things of beauty it is a joy forever, is also, by its perpetual and blessed industry in the service of mankind, an appropriate type of his laborious and useful life.

"In conclusion, I may briefly say of our departed friend that in the practice of his profession he was able, faithful, and successful. He was true to his client and true to the court. He had in a high degree the qualifications of a great judge, but though often proposed for judicial station he remained at the Bar from choice. In political life he was broad, statesmanlike, and patriotic, free from partisan bitterness and the petty planning and plotting for personal or party advantage which are sometimes developed in the practical working of our form of government. He saw things in their larger relations, and loved every inch of the national soil and every citizen of the United States.

"As a husband and father he was pure and affectionate, a very model in domestic life. In private intercourse few men were more pleasant or instructive, and young men invariably found in him a wise and sympathetic adviser and friend. He never forgot the intense struggle by which his own career had become victory, and he was full of suggestion, encouragement, and hope for those whose success depended on the same hard conditions upon which his own had been achieved.

"He was a strong and trusted factor in all the affairs of the community and of the State, and has gone to his grave amid the sorrow and benediction of that people who knew him longest and therefore loved him best.

"The nation has need of such men always, and never more than now. His death at the opening of what I believe would have been a long and most valuable public service had his life and health been spared, is an affliction to the whole country, and the Senate may well pause, even in the rapidly waning hours of the session, to pay to his memory this tribute of honor and of love."

JOHN M. SHIRLEY.

JOHN MAJOR SHIRLEY was born in that part of Sanborntown now East Tilton, N. H., November 16, 1831, and died at his home in Andover, N. H., May 21, 1887. He came of the rugged Scotch-Irish stock which left its characteristics strongly impressed upon many New Hampshire towns. He was the youngest of four children, and his early years were passed in the school of adversity. Of other schooling he had little enough. In early boyhood he attended the brief terms at the district school, and after enjoying the advantages of three terms at the Sanborntown High School, was obliged at fourteen years of age to abandon his studies for work to aid the family.

He afterward was able to attend a few terms more at Northfield Academy. It was his purpose to prepare for college, but his eyesight nearly failing him, the project was abandoned. He taught school and worked upon a farm until May 30, 1850, when he entered the law office of Asa P. Cate and Benjamin A. Rogers, at what is now Tilton, and was admitted to the Bar in Belknap County, September 13, 1854.

For the next seven months he was employed in the office where he had studied, receiving forty dollars as compensation for his services.

October 1, 1855, he entered into a partnership with Samuel Butterfield of Andover, and removing to that town, made it his home, remaining in the constant practice of his profession to the time of his death.

The partnership with Butterfield was terminated in 1860. Subsequently partnerships were formed for brief periods with John P. Carr, Jr., Clarence E. Carr, and George F. Stone, but the work of the firm always bore the strong mind of its leading member.

It was in an individual capacity that he stood for many

years as a leading lawyer of Merrimack and Grafton Counties. His personal characteristics made him a man of mark in his profession. Honest, resolute, uncompromising, and without fear, he knew nothing of policy, and had little tact in smoothing the rougher side of human nature, but as a practitioner he was noted for stanch fidelity to the interests of his clients, never yielding one jot or tittle of what he considered the latter's rights. Tenacious to a fault, he could not brook the thought of compromise. As an investigator in difficult and intricate cases, in the work of hewing, as it were, a road through a new country, he had few peers and no superiors. Persistent and laborious, he worked up his case with unceasing care, and always came into court fully prepared, with a thorough knowledge of the law and a keen appreciation of the weight of evidence. He possessed a powerful memory, and his fund of information was inexhaustible. He was a deep and vigorous writer on legal subjects, and was well and favorably known to members of his profession far beyond the limits of his native state.

He was one of the earliest members of the American Bar Association, and was member for New Hampshire of its General Council until last year, when he resigned because of ill health.

His address, delivered before the Association at Saratoga, on the general practice of law attracted wide attention, and was printed as a separate paper for distribution among the members of the profession as a valuable addition to the literature of the law. In addition to many valuable contributions to the law journals of his time, he was author of the history of the Dartmouth College Causes, a work characterized by elaborate research and profound legal knowledge of the subject, and which was recognized as a classic in legal literature.

Mr. Shirley took a deep interest in the affairs of his adopted town, and was held in high esteem by his fellow-citizens. He was made Postmaster in the first year of his residence in

Andover, represented the town in the Legislature several terms, and was a delegate to the Constitutional Convention of 1876, and was at the head of the School Committee many years, besides taking a deep interest in the Unitarian School, known as Proctor Academy, as he did in everything else pertaining to the prosperity of the town.

He was admitted an Attorney and Counselor of the Circuit Court of the United States in 1865, received the degree of Master of Arts from Dartmouth College in the same year, and in 1871 was appointed Reporter of the decisions of the Supreme Court of New Hampshire, holding the position until removed for his political opinions in 1876.

He was also an active member of the New Hampshire Historical Society, and prepared many papers in its interest, that on "The Early Jurisprudence of New Hampshire" being regarded as one of the most valuable ever read before that organization.

As a Free Mason Mr. Shirley manifested the same capacity for work that he displayed in all other lines of his active life.

He was a charter member of Kearsarge Lodge of Andover, and also a member of Horace Chase Chapter, and Mt. Horeb Commandery of Concord. He was a Scottish Rite member 32°, and a thorough student in the history of the Order. He was for many years Chairman of the Committee on Trials and Appeals in the Grand Lodge of New Hampshire, where his keen perception of facts and his innate love of justice made him conspicuous and valuable among the fraternity.

Beginning with no other advantages than an indomitable will and broad mental capacity, under the discipline of adversity, Mr. Shirley developed and made a proud record for himself, stood high among his fellow-men, and left his mark upon the times. As a lawyer he had the respect of the members of his profession; his townsmen esteemed him as an honest, active, and whole-hearted citizen, while in his home life he was a faithful and devoted husband and father. He

was an ardent friend and a rugged hater. He was an able lawyer, a broad-minded citizen, a successful, self-made man.

The New Hampshire Bar has lost within a few years several very prominent and able members. Probably no state in the Union has suffered heavier loss than this state, and among the gifted men who have thus fallen, while leading in the van of professional and public life, no one is remembered by the profession and the people with higher respect or warmer attachment than Mr. Shirley.

NEW YORK.

AARON J. VANDERPOEL.

The life of A. J. Vanderpoel during the entire period from his admission to the Bar in October, 1846, at the age of twenty-one years, to the time of his sudden death, August 22, 1887, was mainly spent in the active practice of the law in New York. A professional career was marked out for him, not less by his own early choice than by inheritance, his father, an eminent physician in Columbia County, being one of three brothers of whom the other two held high judicial stations, one as Circuit Judge of the Third Circuit of this State from 1830 to 1838, and the other as a Judge of the Superior Court of New York city from 1846 to 1850. After graduating at the University of the City of New York in the class of 1843, he began at once the study of the law, and soon after his entrance on active practice came, by dint of untiring perseverance and industry and the apt use of opportunity, to be identified in an exceptional degree with contested cases at Nisi Prius. His experience and skill as counsel in the litigations in which during many years he represented the Sheriff of the city and county, made him thoroughly versed, both as respects the common law and the statutory law, in the wide

range of principles and practice which those cases necessarily involved, and brought him into close contact with the whole body of the Bar. As his general clientagé rapidly increased, bringing weightier responsibilities and a wider sphere of activity, he kept pace with their requirements, aiding largely in the appellate courts and in the court of last resort in the solution and settlement of many of the new and intricate questions to which the commercial enterprise of recent years has given rise, and attaining a leadership which was the recognized reward of his individual talents and of his singleness of purpose in the discharge of his professional duties.

The secret of his success lay in his vigorous intellect and clear mental perception, his firm grasp of legal principles, his thorough familiarity with the technical side of the law, his straightforward dealing with facts, his discriminating knowledge of adjudged cases, and his capacity for continuous application, only too freely used in the service of his clients, and pushed to the extreme of physical endurance. The labor in which he delighted was pursued without haste, without rest and apparently without fatigue. His even and genial temperament, his freedom from artifice and all doubtful or unworthy expedients, the frankness and fairness of his methods, his self-reliance, and his unselfishness, won for him in a peculiar degree the respect and confidence alike of his associates at the Bar and of the Courts, and strengthened the ties of personal friendship by which so many of his professional brethren were bound to him. To the younger members of the Bar he was always ready to give the benefit of his many-sided experience and learning, and for several years next preceding his death he had been the head of the Law School of his Alma Mater.

He was versed in the literature of the law, and fond of whatever in art or personal reminiscence illustrated its annals or perpetuated the memories of its jurists or the progress of its jurisprudence. As Librarian of the Law Institute for many years, he was most assiduous in the care and promotion

of its interests. No one excelled him in the number or variety of litigated cases requiring constant attention in the courts. No more familiar presence at the Bar or before the Bench than his can be instanced.

BENJAMIN A. WILLIS.

MR. WILLIS was born of Quaker parentage in Rosyln, L. I., March 24, 1840. He was graduated by Union College in 1861, and studied law at Poughkeepsie and with William M. Ingraham in Brooklyn. In 1862 he raised a company at Rosslyn and entered the army. He served in the One Hundred and Nineteenth New York, and subsequently as colonel in the Twelfth New York Regiment, and continued in the service until the close of the war, participating in the battles of Chancellorsville and of Gettysburg. Subsequently he resumed the practice of his profession, and at the time of his death he had an office in Wall Street.

He was elected to the Forty-fourth Congress in 1874 as a Liberal Republican, indorsed by the Democrats. He was re-elected two years later over Levi P. Morton. For some years Mr. Willis was a warm friend of Samuel J. Tilden. He was a member of the Grand Army of the Republic and of the Union and Manhattan Clubs.

He was married on June 3, 1873, to Lillie Evelyn Macauley, whose ancestors also belonged to the Society of Friends. Mr. Willis was a member of the Episcopal Church and a vestryman for several years of the church called "The Heavenly Rest," situate on Fifth Avenue, New York. He was also for four years a Trustee in the Church of the Holy Trinity in the same city.

He was a strong temperance advocate, and himself a total abstinence man.

He died on October 13, 1886, six days after the birth of his twin children—a boy and a girl.

He left a wife and four children.

OHIO.

MICHAEL AUGUSTUS DAUGHERTY.

MICHAEL AUGUSTUS DAUGHERTY was born November 27, 1816, at Baltimore, Md. His parents emigrated from the North of Ireland about the year 1810. He was educated at the Baltimore Academy, where he graduated. At the age of nineteen years he came to Ohio, and shortly afterward commenced the study of medicine under Dr. Z. Kreider, of Lancaster, Fairfield County.

After pursuing the study of medicine until he was almost ready to enter upon its practice, his necessities became such that he was compelled to abandon it and teach school for some time, during which the further prosecution of the study of medicine became distasteful to him, and he entered upon the preparation for the profession which he has so eminently graced and honored.

He settled at Lancaster, read law with Hon. John Garaghty, and was admitted to practice by the Supreme Court of Ohio in 1838 on the circuit at Dayton. He at once entered upon the practice of his profession at Lancaster, and very soon took a high position at the Bar, at that time one of the most celebrated in the state.

A long and serious illness during the winter of 1849–50, and his slow recovery therefrom, made it imperative that he quit the arduous labors of the practice, which he did with the intention, however, of resuming it as soon as his health would permit.

By the advice of his physician and the influence of his esteemed friend, Mr. D. Tallmadge, the president of the bank, he became the cashier and manager of the Hocking Valley Branch State Bank of Ohio, in which position he remained for five years, managing it with marked success.

At the end of this period (1855) fully restored to his former strength and vigor of mind and body, he entered into

a law partnership with the late Hocking H. Hunter, which continued until February, 1872, when it was dissolved by the death of Mr. Hunter.

In 1860 he was a delegate from Ohio to the Charleston Convention, where he steadfastly supported the candidacy of Stephen A. Douglas throughout that long and memorable contest which marked a crisis in the history of our country, and in 1872 he was again sent as a delegate to the National Democratic Convention which met at Baltimore.

In 1869 he was elected on the Democratic ticket to the State Senate, and re-elected in 1871, and did much important work as a member of the Judiciary Committee in shaping and directing legislation. In 1873 he was defeated by a small majority as candidate for Attorney-General.

The work with which Mr. Daugherty's name is most imperishably associated, and to which he gave his best energies and mature knowledge, was a revision and consolidation of the statutes of the state. Appointed by Governor Allen in April, 1875, upon the Commission of three members provided by law for the purpose, he devoted four years and a half of unremitting labor toward bringing into logical form and system the chaotic mass of statutory law which had theretofore crowded our statute books.

Upon the passage by the General Assembly of his state, several years since, of an act intended to elevate the standard of the legal profession, providing for the appointment by the Supreme Court of a committee composed of leading members of the Bar to examine applicants for admission to practice, that court committed the work to a committee of which Mr. Daugherty was made Chairman, and that committee, with Mr. Daugherty as its guiding spirit, established and successfully prosecuted the system of examinations which reflects credit upon the profession of which he was so distinguished a member. Upon retiring from that committee, at the close of 1883, he received the thanks of every member of the Supreme Court for his services in that respect.

He removed from Lancaster to Columbus in October, 1873. For some time before and after his removal, and until the day of his last illness, he, to a large extent, kept up the practice of his profession, chiefly, however, in select cases of importance, and in the higher courts, his example in which is before us to stimulate our efforts to render our profession worthy of its great object—the administration of justice between individuals and the propagation amongst men of the obligations of civilized society, regulated by law and order.

The latter years of his life have been given considerably as adviser of corporations. The last work of this character was in the organization of the Clinton National Bank, of Columbus, of which he died a director.

From an honored and liberty-loving ancestry, the heads of which had fought under Celtic chiefs and had lost their lands in the wars of Ireland, and had felt the full weight of the harsh penal code which long held the Catholic Irish down, he inherited an uncompromising hatred of oppression in every form, and through all his life, public and private, he cherished a regard for the poor and the down-trodden, and whenever and wherever they needed a champion, he was ready in their defense, with the hope of no other reward than the consciousness of helping the weak. At the time of his death he was a member and President of the Irish Parliamentary Aid Association.

Mr. Daugherty was married on the twenty-fifth of May, 1843, to Phebe M., daughter of John Wood, Esq., of Maysville, Ky., who survives him. No child was born to them. He died on January 15, 1887, at his residence on East Broad Street, Columbus, Ohio.

PENNSYLVANIA.

WILLIAM D. WETHERILL.

WILLIAM D. WETHERILL, of the Philadelphia Bar, died February 11, 1887. He was born in Lower Merion, Montgomery County, Pennsylvania, December 16, 1845, and, after a careful preliminary education, he entered Princeton College, and was graduated in 1865. His legal preceptor was George W. Biddle, Esq., and he was admitted to the Bar of Philadelphia June 13, 1868.

He became a successful practitioner, and, with fine intelligence, acquired an extensive knowledge of the law, his character and ability securing the respect and confidence of all with whom he was associated, and giving the promise of professional distinction.

RHODE ISLAND.

JOHN P. GREGORY.

JOHN P. GREGORY, of Lincoln, Rhode Island, died at his home in Central Falls, August 5, 1887, of Bright's disease, at the age of forty-seven years. Mr. Gregory was born in the old Dawley house, situated on the north side of the old Baptist Church, on High Street, in that village, then a part of the town of Smithfield, March 3, 1840. He received a common school education in the public schools, and then served his time at the brick masons' trade, but was obliged to give it up, as he was subject to hemorrhages from the head. His father died when Mr. Gregory was but a child, and his mother was obliged to work in the mill in order to support her family. It was by her aid that he was allowed to finish his education. He graduated from the State Normal School, and obtained a school to teach in the southern

part of the state. During his leisure moments he studied law, and was admitted to the Bar February 17, 1866. At the consolidation of the courts of the towns of Lincoln and Pawtucket he was appointed one of the Justices of the Court of Magistrates, and served in that capacity from 1865 to 1871. He was chosen Representative to the General Assembly from the town of Lincoln from 1878 to 1884, and Senator from 1884 to the time of his death. He has been Town Solicitor for the past two years. In all the positions he was called upon to fill he proved himself worthy and capable, and as a citizen he was highly respected by all. During his term of service in the Legislature, both as Representative and again as Senator, he commanded the highest respect of all his associates of whatever party complexion. From his conservatism and thorough knowledge of the usages of the legislative body he was regarded as one of the leading members of the General Assembly, and, while in the Senate, occupied one of the most important positions on its committees, that of Chairman of the Judiciary Committee. His death will thus be felt as a serious loss to the whole state.

As a lawyer Mr. Gregory was very technical, and his opinions on the construction of statutes were very apt to be confirmed by the decisions of the courts. He was well read in the common law, and very careful in giving advice in it, seeking, if possible, confirmation of his views by other lawyers before imparting them to his clients. The delicate state of his health confined him mostly to office practice, but when he did appear in the courts, his care in the preparation of his cases and of his arguments almost always insured him success. A safe counselor, a good general practitioner, and a studious lawyer, he will long be mourned and missed in the community of which he was so prominent a member.

SOUTH CAROLINA.

JAMES HENRY RION.

JAMES HENRY RION was born of English parentage at Montreal, Canada, on the 17th day of April, 1828.

In early life he became an inmate of the family of that illustrious patriot and statesman, John C. Calhoun, for whose memory he ever cherished the warmest and most sincere attachment.

His early education was chiefly obtained at Pendleton, S. C., the home of Mr. Calhoun, and at Savannah, Ga. In 1846 he was prepared to enter West Point, Mr. Calhoun at that time having been promised the naming of one of the appointees at large by President Polk. A rupture, however, having occurred between the President and Mr. Calhoun, the appointment was given to some one else.

Mr. Rion shortly afterward entered the South Carolina College, then in its palmiest days, and from that Institution he was graduated with the highest honors of his class—a notable one—in the year 1850, his chief competitor being the brilliant Robert W. Barnwell, Jr.

Immediately after his graduation he was elected Professor of Mathematics in Mt. Zion College, Winnsboro, S. C., and acceptably filled that position for a few years.

In 1854 he entered upon the practice of the law.

In 1858 he was elected colonel of the Twenty-fifth Regiment, State Militia, and in 1859 President of the Planters' Bank of Fairfield.

In 1861, casting his life and fortune with the people of his state, he was elected to the colonelcy of the Sixth South Carolina Regiment.

Throughout the war, true to his convictions, he served with conspicuous gallantry.

Returning home after the war, he resumed the practice of

his profession, and soon acquired the largest practice at the local bar.

He was soon after the war retained as general counsel for the Charlotte, Columbia and Augusta Railroad, and he continued to hold this position up to the time of his death. He was also called to hold various offices of trust in the county of his adoption, and was at the time of his death corporation counsel of the town of Winnsboro, attorney for the Winnsboro National Bank, and also for several railroads in the state.

He had a place for everything, and could in the dark place his hand upon any paper that he desired amidst the vast variety of cases intrusted to his care, and all of which were systematically and carefully arranged in his well-appointed law office.

The demands of his constantly increasing practice called for an extensive outlay in the matter of law books, and he had, at the time of his death, perhaps the largest private law library in the state, besides an extensive library of literary, theological, medical, and scientific works, to which he always devoted his spare moments in the evenings.

Recognizing his profound learning and attainments, in 1885 Davidson College, of North Carolina, conferred upon him the degree of Doctor of Laws.

In December, 1886, he was unanimously chosen as President of the South Carolina Bar Association, a distinction which he prized more highly than any gift within the power of the people of his state. During the same year he was also elected a member of the American Bar Association, and attended its annual meeting at Saratoga, where he made many warm friends by his kind and genial manners and his entertaining and instructive conversation.

There are very few of the important cases which have been argued in the courts of upper South Carolina during the last twenty years in which the well-known legal skill and learning of Colonel Rion were not invoked, for his reputation as a lawyer was co-extensive with the limits of the state.

On the 11th day of December, 1851, Colonel Rion was married to Miss Mary C. Weir, a lady of strong intellectual powers, like his own, with whom he passed a life of the utmost domestic peace and happiness.

His death was sudden, being caused by *angina pectoris.*

On the 12th day of December, 1886, this noble man, loved and honored by all who knew him for his charity and good works, so frequently and unostentatiously shown to those in need, calmly and peacefully passed away, surrounded by a loving wife and devoted children, meeting death with Christian patience and resignation, and more than heroic fortitude

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VERMONT.

LUKE P. POLAND.

LUKE POTTER POLAND, who died at Waterville, Vt., July 2, 1887, was born at Westford, Vt., November 1, 1815, his father having removed from North Brookfield, Mass., the year preceding. His boyhood was spent between the meagre allotment of the district school and the work of assisting his father at his joint callings of carpenter, saw-mill operator, and farmer. This education was supplemented by five months at Jericho Academy. Thus slightly equipped, he set forth on foot with his bundle under his arm, full of high hopes, to conquer the world. Under the airy castles which his imagination constructed in these early years, he, later in life, laid a secure foundation. Traveling some dozen miles or so, he was engaged to teach the village school at Morrisville, and after a successful term he there entered the office of Samuel A. Willard as a student at law. While pursuing his studies here Judge Willard sent him forth to establish a branch office at Greensboro, and the boy not yet out of him. After a year of this experience he was recalled

and made a partner by Judge Willard. Here he continued the practice of law for three years, when he opened an office for himself in the same village, and at once took foremost rank among the promising young men of the state. He had made no mistake in his calling. It had been assigned him by a voice from above, and his recognition of this fact made him an accomplice to his own destiny. From this time forth the uncertain current of his life assumed a fixed direction.

He was summoned from this field of labor in 1848 to the Supreme Bench of the state, then thirty-two years of age, being elected by a Whig Legislature over a Whig competitor, himself having that year been given the second place upon the state ticket by the first Free Soil convention held in Vermont, Oscar L. Shafter being named for Governor. He was ever after loyal to the principles of this party and a champion of the negro race. Many years later, while occupying the Speaker's chair in the National House of Representatives, he called Mr. Rainey, member from South Carolina, to preside over the assembly, which was the first instance of a person of African descent occupying that position. He joined the Republican party upon its formation and was thenceforward an influential member of that party and loyal to its purposes, except when loyalty required the sacrifice of principle. He was Chairman to the Vermont delegation to the National Convention which first nominated Mr. Blaine. This delegation did not cast its vote for Mr. Blaine. After the nomination, being inquired of if Vermont would support the nominee, Judge Poland's characteristic reply was: "Vermont usually takes a higher position than the rest of the country, and if we cannot bring the country up to our standard, why, we have to come down a little to meet it. As the nominee of the party is Mr. Blaine, he will secure the usual number of votes in Vermont, which is all there is." He worked zealously for Mr. Blaine's election.

He received seventeen successive elections as Judge by *viva voce* vote, and in 1860 was made Chief Justice, which

office he held until, in 1865, he was appointed to succeed Judge Collamer in the United States Senate, and by the succeeding Legislature was elected to serve out the unexpired term of that distinguished statesman. He entered the Senate at the time the problems of reconstruction were vexing Congress and the nation, and was at once placed upon the Committee of Elections. His strong sense of justice and habit of judicial fairness, brought him into collision with the leaders of his own party, and provoked the censure of the more partisan of the leading Republican journals. But this very independence and tenacity for the right gave him the reputation which, later, when that series of investigations was begun, all of which had collaterally a partisan bearing, suggested him as the man best fitted to conduct them.

While a member of the Senate Judiciary Committee of the Thirty-ninth Congress, he secured the passage of a bill for the revision and consolidation of the United States Statutes, which had been allowed to accumulate for nearly a century without codification. Upon the expiration of his term in the Senate, he was elected to represent the Second District in the lower branch of Congress, and was made Chairman of the Committee upon the Revision of the Laws, which position he held until this stupendous work was completed and became law, in June, 1874. It is a monument more enduring than marble to his tireless industry as a legislator, his great ability as a lawyer, and passed, as it was, without change or amendment, to the implicit confidence both branches of Congress reposed in his faithfulness and capacity for the great trust.

In 1870 President Grant offered him the position of Chief Justice of the Court of Claims. It was a position to his taste, and would have been accepted but for the responsibility he felt for the completion of this work.

While this laborious task was in progress, in addition to his ordinary duties, Judge Poland, as chairman of the committee appointed for that purpose, conducted the investigation of the Ku-Klux Klan outrages, the evidence in which filled

thirteen large printed volumes. The exposures resulting from this investigation effectually broke up this organization, whose deeds were scarcely rivaled in atrocity by "The Assassins" of earlier and more barbarous times. He was also chairman of the committee which investigated the transactions of the Credit Mobilier Company. This work occupied some months, and the result was the relegation of several distinguished gentlemen to private life, who were never again able to rehabilitate themselves with the public.

He also conducted the investigation into the state of affairs in Arkansas, which was had at the capital of that state, and resulted in the prevention of all further attempts at interference of Federal authority in the affairs of the several states, with its co-inhabiting mischief. The Boston *Herald* said truly that "this investigation was conducted in defiance of the most persistent blandishments of the Administration and with a Federal judgeship in Vermont awaiting the President's appointment." It is true that Judge Poland was looking with anticipation toward this appointment. For his loyalty to justice and the principles of self-government the people of Arkansas hold his memory in grateful remembrance. One county in the state bears his name. The leading state journal paid him this terse tribute: "He investigated for the truth, found the truth, and told the truth, like the plain, blunt old man that he was."

There was a bitter fight in the House over this measure, General Butler conducting the opposition, backed by the influence of the Administration. Judge Poland had unbounded faith in the inherent capacity of truth for prevailing and in the terrible potency of right, and his courage never failed him. He snatched a splendid victory from a hostile House. Here many learned for the first time that that certain calmness of demeanor but ill expressed the keen ardor of his soul.

He was elected to the Fortieth, Forty-first, Forty-second, Forth-third, and Forty-eighth Congresses, and during this

period, no member of either body was so intimately identified with so many important measures. He secured the passage of the Bankrupt Law, which had been committed to his keeping by the Judiciary Committee. He took active part in the discussion of the Geneva Award. He hotly opposed the passage of the act known as the "Salary Grab." He was one of the committee sent by Congress to Prince Edward's Island to consider the matter of commercial relations with its citizens. He was also made one of the Regents of the Smithsonian Institute.

He declined to be a candidate for re-election to the Forty-ninth Congress, and retired from active public life, still wearing his advanced manhood, hale and green, leaving a magnificent record behind him, the record of a life still echoing on. But when called upon by his townsmen to represent St. Johnsbury in the State Legislature of 1878, he cheerfully responded to the call, and later, having removed his residence to his farm in Waterville, the home of his boyhood, he consented to represent that town (whose first representative had been his father) in the Legislature of 1886.

He continued the practice of his profession in the higher state and the Federal courts, and his power of abridging and getting at once at the sum total of things, together with the capacity for forcing language to convey thought with intensity and perfect exactness, endowed him with the "gift of prevailing with the court."

As a *nisi prius* judge he was eminent, and never had a superior in Vermont. His knowledge of practical affairs, his capacity to analyze cases and eliminate all that was irrelevant, his freedom from technicality, his sound and discriminating judgment, his ability to make his rulings rapidly, but with such solid basis of fundamental principles and such clearness of expression as to be convincing to the hearer, enabled him to transact the business of his courts with expedition and dignity, and to the satisfaction of litigants and the bar. In the Supreme Court, the same qualities rendered him eminent.

His opinions were not characterized by extended citations of authorities, but by strong logic, lucid exposition of the vital principles that underlie the cause in hand, and apt and practical illustration. They are models as discussions of law based upon solid reason. His associate for many years upon the bench, Hon. James Barrett, writes concerning him: "Some of the cases in which he drew the opinion of the court stand forth as leading cases, and his treatment of the subject involved ranks with the best specimens of judicial disquisition."

His life-work was one of unusual disinterestedness. He had great faith in the people, labored for their welfare, and enjoyed their approval; but he cared more for the approval of his own conscience. With him, politics was the science of human justice, and its end, to subserve human happiness.

That he should have achieved so much, and acquitted himself so well, was due to the wealth of his natural endowments, supplemented by that genius which Buffon defines as "a protracted patience," and which Carlyle called the "transcendent capacity for taking pains." Behind all this was that sterling integrity which displayed itself in an almost fierceness—the "ire of truth." His unexampled career seems to set limits to the laws of heredity. Without ancestors of specially marked gifts, there was no cumulative intelligence of several generations to account for his large endowment. Doubtless God does sometimes bestow His favors without asking who was a man's father.

Altogether, more than any other man, he was the distinctive product of Vermont institutions and Vermont civilization. Senators Phelps, Collamer, Edmunds, and others of his peers might have been the outgrowth of another state. Judge Poland, such as he was, could only have emanated from Vermont, and was one of her sons, of whom she has not few, who have saved the state from becoming to the outside world a mere geographical expression.

The multiplicity of his political and professional duties did

not abridge his capacity for other work. He was for twenty-two years President of the First National Bank of St. Johnsbury; was one of the Trustees of the University of Vermont, which institution conferred upon him the degree of Doctor of Laws; was among those who secured the organization of the American Bar Association, and was Chairman of its Executive Committee from its organization till his death; took an active interest in the State Bar Association, and, when at home, always attended State, District, and County Conventions, and town meetings, and into whatever he touched he poured a distinct personal power.

The most admirable qualities of the man were displayed in his private life and in his family relations. To him the most fitting close of his day of toil with great and grave matters was a romp with the elder, or the lullaby song to the younger of his grandchildren. It was his uniform practice, when at home, to rock the baby to sleep. In his relations to his fellow-men he was urbane and affable, except to bores. Toward this kind he knew how to preserve a "monosyllabic aloofness." Conventional education had not destroyed his individuality, nor had nature been driven out by culture, and he always displayed a lively sympathy with those occupying the lower walks of life, from which he had sprung.

MEMORANDUM OF SUBJECTS REFERRED TO COMMITTEES.

Resolution of C. C. Bonney, of Illinois, introduced at the session of 1886, relating to the establishment of courts of arbitration.

Recommitted to the Committee on Jurisprudence and Law Reform. (See pages 29, 40, 50.)

Resolution of C. C. Bonney, of Illinois, offered on behalf of Simeon E. Baldwin, of Connecticut, relating to the enactment in the several States of some uniform law to regulate the marriage of their citizens in foreign countries, and the proper authentication and legislation of such marriages in this country.

Referred to the Committee on Jurisprudence and Law Reform. (See page 81.)

Resolution of Walter George Smith, of Pennsylvania, offered in behalf of George Hoadly, of New York, relating to the exchange of written or printed briefs by counsel, before the submission of the cause.

Referred to the Committee on Judicial Administration and Remedial Procedure. (See page 82.)

Resolution of R. L. Morris, of Tennessee, relating to an increase of the salaries of District Court Judges of the United States.

Referred to the Committee on Judicial Administration and Remedial Procedure. (See page 85.)

Resolution of J. R. Johnston, of Ohio, relating to legislation deemed necessary to correct the irregularities in and evils growing out of the present laws relating to marriage and divorce.

Referred to the Committee on Jurisprudence and Law Reform. (See page 87.)

LIST OF BAR ASSOCIATIONS IN THE UNITED STATES.

NOTE.—This list has been compiled by the Secretary of the American Bar Association from replies to circulars sent out; and, while pains have been taken to make it as complete as possible, it is probable that some Associations have been omitted. In some cases the officers for last year are given where officers for 1887 are not known. The Secretary will be much indebted for information of any omissions and for corrections of the officers.

ALABAMA.

NAME.	PRESIDENT.	SECRETARY.
Alabama State Bar Association.	H. C. Tompkins, Montgomery.	Alexander Troy, Montgomery.
MOBILE BAR ASSOCIATION.		Harry Pillans (in 1886), Mobile.
SHELBY COUNTY BAR ASSOCIATION.	C. G. Wagner, Siluria	E. S. Lyman, Montevallo.

ARKANSAS.

Arkansas State Bar Association.	H. G. Bunn, Camden.	G. W. Shinn, Little Rock.

CALIFORNIA.

BAR ASSOCIATION OF LOS ANGELES.		
BAR ASSOCIATION OF OAKLAND.		
BAR ASSOCIATION OF SAN FRANCISCO.	S. M. Wilson, San Francisco.	Thos. V. O'Brien, San Francisco.

COLORADO.

Colorado Bar Association.	J. B. Bissell, Leadville.	Charles B. Clements, Denver.

CONNECTICUT.

Connecticut State Bar Association.	Chas. E. Perkins, Hartford.	Chas. M. Joslyn, Hartford.
NEW HAVEN JUNIOR BAR ASSOCIATION.		H. M. Hotchkiss (in 1886), New Haven.

DELAWARE.

NAME.	PRESIDENT.	SECRETARY.
BAR ASSOCIATION OF NEWCASTLE CO.	Anthony Higgins, Wilmington.	Geo. H. Bates, Wilmington.

DISTRICT OF COLUMBIA.

Bar Association of the D. of Columbia.	James G. Payne, Washington.	Charles A. Elliott, Washington.
FEDERAL BAR ASSOCIATION OF D. C.	S. F. Phillips, Washington.	George A. King, Washington.

FLORIDA.

JACKSONVILLE BAR ASSOCIATION.	L. I. Fleming, Jacksonville.	C. S. Adams, Jacksonville.
ORANGE COUNTY BAR ASSOCIATION.		

GEORGIA.

Georgia Bar Association.	Clifford Anderson, Macon.	Walter B. Hill, Macon.

ILLINOIS.

Illinois State Bar Association.	E. B. Green, Mt. Carmel.	William L. Gross, Springfield.
CHICAGO BAR ASSOCIATION.	James L. High, Chicago.	Geo. W. Cass, Chicago.

INDIANA.

Indiana State Bar Association.		John M. Judah, Indianapolis.
HOWARD COUNTY BAR ASSOCIATION.	Jas. C. Blacklidge, Kokomo.	Albert B. Kirkpatrick, Kokomo.
MARION COUNTY BAR ASSOCIATION.	Ferdinand Winter, Indianapolis.	John E. Scott, Indianapolis.

IOWA.

State Bar Association.		A. B. Cummins (in 1886), Des Moines.
CLARK COUNTY BAR ASSOCIATION.		W. M. Hyland (in 1886), Osceola.
POLK COUNTY BAR ASSOCIATION.		Geo. F. Henry (in 1886), Des Moines.

KANSAS.

NAME.	PRESIDENT.	SECRETARY.
Bar Association of State of Kansas.	Solon O. Thatcher, Lawrence.	John W. Day, Topeka.

KENTUCKY.

State Bar Association.		H. C. Brannan (in 1886), Louisville.

LOUISIANA.

Bar Association of Louisiana.	Don Caffrey, Franklin.	John C. Wickliffe, Colfax.
New Orleans Law Association.	James McConnell, New Orleans.	J. O. Nixon, Jr., New Orleans.

MAINE.

State Bar Association.		C. F. Woodard (in 1886), Bangor.
Cumberland Bar Association.	Sewall C. Strout, Portland	Edward Woodman, Portland.
Kennebec County Bar Association.		H. W. True (in 1886), Augusta.
Penobscot County Bar Association.		F. H. Appleton (in 1886), Bangor.

MARYLAND.

Bar Association of Baltimore City.	J. Morrison Harris, Baltimore.	John N. Steele, Baltimore.

MASSACHUSETTS.

Bar Association of the City of Boston.	Causten Browne, Boston.	Robert Grant, Boston.
Berkshire County Bar Association.		Thomas M. Pingsee (in 1886), Pittsfield.
Essex Bar Association.	Wm. D. Northend, Salem.	Geo. B. Ives, Salem.
Fall River Bar Association.	James M. Morton, Fall River.	John J. McDonough, Fall River.
Franklin County Bar Association.		John A. Aiken (in 1886), Greenfield.
Hampden Bar Association.		Robert O. Morris, Springfield.

MASSACHUSETTS—*Continued.*

NAME.	PRESIDENT.	SECRETARY.
HAMPSHIRE BAR ASSOCIATION.		John B. Bottum, Northampton.
NORFOLK BAR ASSOCIATION.	Asa French, Boston.	Oscar A. Marden, Boston.
PLYMOUTH COUNTY BAR ASSOCIATION.		Arthur Loud, Plymouth.
WORCESTER COUNTY BAR ASSOCIATION.	W. S. B. Hopkins, Worcester.	Webster Thayer, Worcester.
	MICHIGAN.	
BAY COUNTY BAR ASSOCIATION.		F. S. Pratt (in 1886),
DETROIT BAR ASSOCIATION.	Charles I. Walker, Detroit.	Edward W. Pendleton, Detroit.
KENT COUNTY BAR ASSOCIATION.		J. B. Wilson (in 1886), Grand Rapids.
LENAWEE COUNTY BAR ASSOCIATION.		T. R. Payne (in 1886), Adrian.
SAGINAW COUNTY BAR ASSOCIATION.		C. H. Gage (in 1886), ———
	MINNESOTA.	
State Bar Association.		Hiram F. Stevens (in 1886), St. Paul.
MINNEAPOLIS BAR ASSOCIATION.	W. J. Hahn, Minneapolis.	George H. Fletcher, Minneapolis.
ST. PAUL BAR ASSOCIATION.	C. D. O'Brien, St. Paul.	F. G. Ingersoll, St. Paul.
	MISSISSIPPI.	
Mississippi Bar Association.	W. L. Nugent, Jackson.	C. H. Alexander, Jackson.
MONROE COUNTY BAR ASSOCIATION.		Q. O. Eckford (in 1886), Aberdeen.
	MISSOURI.	
Missouri Bar Association.	John F. Phillips, Kansas City.	W. A. Alderson, Kansas City.
KANSAS CITY BAR ASSOCIATION.	J. V. C. Karnes, Kansas City.	W. A. Alderson, Kansas City.
ST. LOUIS BAR ASSOCIATION.	Gus. A. Finkelburg, St. Louis.	Henry Hitchcock, Jr., St. Louis.

NEBRASKA.

NAME.	PRESIDENT.	SECRETARY.
Nebraska State Bar Association.	Charles O. Whedon, Lincoln.	Lionel C. Burr, Lincoln.
DOUGLAS COUNTY BAR ASSOCIATION.	B. E. B. Kennedy, Omaha.	N. J. Burnham, Omaha.

NEVADA.

None.

NEW HAMPSHIRE.

GRAFTON AND COOS BAR ASSOCIATION.	William Heywood, Lancaster.	Geo. W. Chapman, Haverhill.

NEW JERSEY.

State Bar Association.		Malcolm W. Nevin (in '86), Hoboken.
CAMDEN COUNTY BAR ASSOCIATION.	Abraham Browning, Camden.	B. F. H. Shreve, Camden.
ESSEX COUNTY BAR ASSOCIATION.	A. Q. Keasbey, Newark.	Frederick S. Fish, Newark.
HUDSON COUNTY BAR ASSOCIATION.	W. B. Williams, Jersey City.	William P. Douglass, Jersey City.
MONMOUTH COUNTY BAR ASSOCIATION.		James Steek (in 1886), Eatontown.
UNION COUNTY LAW LIBRARY & BAR ASS'N.	F. E. Marsh (Vice-P.) Elizabeth.	F. M. Voorhees, Elizabeth.

NEW YORK.

New York State Bar Association.	Martin W. Cook, Rochester.	L. B. Proctor, Albany.
ASS'N OF THE BAR OF THE CITY OF N. Y.	Wm. Allen Butler, New York.	Silas B. Brownell, New York.

NORTH CAROLINA.

None.

OHIO.

State Bar Association.		J. T. Holmes (in 1886), Columbus.
CUYAHOGA COUNTY BAR ASSOCIATION.		J. H. Webster (in 1886), Cleveland.

OHIO—*Continued.*

NAME.	PRESIDENT.	SECRETARY.
DAYTON BAR ASSOCIATION.	Lewis B. Gunckel, Dayton.	C. W. Dustin, Dayton.
FRANKLIN COUNTY BAR ASSOCIATION.		S. S. Rankin (in 1886), Columbus.
HAMILTON COUNTY BAR ASSOCIATION.		W. C. Cochran (in 1886), Cincinnati.

OREGON.

None.

PENNSYLVANIA.

ADAMS COUNTY BAR ASSOCIATION.	D. Conaughy, Gettysburg.	John M. Kranth, Gettysburg.
ALLEGHENY COUNTY BAR ASSOCIATION.	W. B. Negley, Pittsburg.	E. Y. Breck, Pittsburg.
LAW ASSOCIATION OF BEAVER COUNTY.	A. S. Moore, Beaver.	John M. Buchanan, Beaver.
LEGAL ASSOCIATION OF BERKS COUNTY.		Harrison Maltzberger, Reading.
BLAIR COUNTY BAR ASSOCIATION.	S. S. Blair, Hollidaysburg.	A. S. Landis, Hollidaysburg.
BRADFORD COUNTY BAR ASSOCIATION.	D. A. Overton, Towanda.	James A. Codding, Towanda.
BUCKS COUNTY BAR ASSOCIATION.	N. C. James, Doylestown.	H. O. Harris, Doylestown.
CAMBRIA COUNTY BAR ASSOCIATION.	George M. Reade, Ebensburgh.	A. V. Barker, Ebensburgh.
CENTER COUNTY BAR ASSOCIATION.		L. A. Schaffer, Bellefonte.
CHESTER COUNTY BAR ASSOCIATION.	Wm. B. Waddell, West Chester.	R. Jones Monaghan, West Chester.
CLEARFIELD COUNTY BAR ASSOCIATION.	Joseph B. McEnally, Clearfield.	
COLUMBIA COUNTY BAR ASSOCIATION.	John G. Freeze, Bloomsburg.	Charles J. Barkly, Bloomsburg.
CRAWFORD COUNTY LAW LIBRARY ASS'N.	W. R. Bole, Meadville.	A. G. Church, Meadville.
DELAWARE CO. LAW LIBRARY ASS'N.	Jno. B. Hinkson, Chester.	Wm. B. Broomall, Chester.

PENNSYLVANIA—*Continued.*

NAME.	PRESIDENT.	SECRETARY.
Erie County Bar Association.	Jno. P. Vincent, Erie.	E. L. Whittelsey, Erie.
Forest Bar Association.	Sam'l D. Irwin, Tionesta.	P. Monroe Clark, Tionesta.
Waynesburg Bar Association.	J. J. Buchanan, Waynesburg.	R. F. Downey, Waynesburg.
Huntingdon Bar Association.	Jno. M. Baily, Huntingdon.	H. B. Dunn, Huntingdon.
Law Association of Indiana Co.	A. W. Taylor, Indiana.	Jno. H. Pearce, Indiana.
Lackawanna Law Library Ass'n.	W. W. Lathrop.	J. H. Torey.
Lancaster Bar Association.	H. M. North, Columbia.	Jno. W. Appel, Lancaster.
Lawrence Co. Bar Association.	D. R. Kurtz, New Castle.	Jas. A. Gardner, New Castle.
Wilkes-Barre Law Library Ass'n.	A. T. McClintock, Wilkes-Barre.	Geo. R. Bedford, Wilkes Barre.
Lycoming Law Association.	Henry C. Parsons, Williamsport.	Jas. B. Krause, Williamsport.
McKean Co. Bar Association.	Byron D. Hamlin, Smethport.	Geo. L. Roberts, Bradford.
Montgomery Co. Bar Association.	James Boyd, Norristown.	Wm. F. Dannehower, Norristown.
Northampton Co. Bar Association.	Edward S. Fox, Easton.	Henry S. Cavanaugh, Easton.
Law Association of Philadelphia.	G. W. Biddle, Philadelphia.	Robert D. Coxe, Philadelphia.
Schuylkill Co. Bar Association.	Jno. W. Roseberry, Pottsville.	Geo. J. Wadlinger, Pottsville.
Snyder County Bar Association.	Samuel Alleman, Selin's Grove.	Jno. H. Arnold, Selin's Grove.
Susquehanna Legal Association.	Wm. H. Jessup, Scranton.	H. C. Jessup, Montrose.
Tioga County Bar Association.	R. C. Simpson, Wellsboro.	J. Harrison, Wellsboro.
Warren County Bar Association.	W. M. Lindsey, Warren.	J. O. Parmlee, Warren.
Westmorland Law Association.	H. P. Laird, Greensburg.	W. A. Griffith, Greensburg.

RHODE ISLAND.

NAME.	PRESIDENT.	SECRETARY.
PROVIDENCE BAR CLUB.	Benj. F. Thurston, Providence.	Lorin M. Cook, Providence.

SOUTH CAROLINA.

South Carolina Bar Association.	Wm. Henry Parker, Abbeville.	W. C. Bluet, Abbeville.

TENNESSEE.

Tennessee Bar Association.	H. H. Ingersoll, Knoxville.	J. W. Bonner, Nashville.
NASHVILLE BAR ASSOCIATION.	W. F. Cooper, Nashville.	P. D. Maddin, Nashville.
SHELBY COUNTY BAR ASSOCIATION.		T. Flanaghan (in 1886), Memphis.

TEXAS.

Texas Bar Association.	T. J. Beall (in 1886), El Paso.	Chas. S. Morse, Austin.

VERMONT.

Vermont Bar Association.	Chas. H. Heath, Montpelier.	Geo. W. Wing, Montpelier.

VIRGINIA.

LOUISA BAR ASSOCIATION.	F. W. Sims, Louisa C. H.	Everett Perkins, Louisa C. H.
RICHMOND BAR ASSOCIATION.	W. W. Henry, Richmond.	Jackson Guy, Richmond.

WEST VIRGINIA.

West Virginia Bar Association.	Joseph Sprigg, Moorefield.	W. P. Willey, Morgantown.
OHIO COUNTY BAR ASSOCIATION.		H. M. Russell (in 1886), Wheeling.

WISCONSIN.

Wisconsin State Bar Association.	Moses M. Strong, Mineral Point.	Edward P. Vilas, Madison.
MILWAUKEE BAR ASSOCIATION.		H. Morris (in 1886), Milwaukee.

DAKOTA TERRITORY.

NAME.	PRESIDENT.	SECRETARY.
GRAND FORKS COUNTY BAR ASSOCIATION.	A. W. Bangs, Grand Forks.	W. L. Wilder, Grand Forks.

MONTANA TERRITORY.

Montana Bar Association.	Henry N. Blake, Virginia City.	James U. Sanders, Helena.
HELENA BAR ASSOCIATION.	William Chumasero, Helena.	W. E. Cullen, Helena.

NEW MEXICO TERRITORY.

New Mexico Bar Association.	Neill B. Field, Albuquerque.	Edward L. Bartlett, Santa Fe.

UTAH TERRITORY.

BAR ASSOCIATION OF SALT LAKE CITY.	Ben Sheeks, Salt Lake City.	H. G. McMillan, Salt Lake City.

NEXT ANNUAL MEETING.

The next Annual Meeting will be held at Putnam's Music Hall, Saratoga Springs, New York, on Wednesday, Thursday, and Friday, August 15th, 16th, and 17th, 1888.

NOTICE AS TO REPORTS.

By order of the Executive Committee the following prices have been fixed for the reports; they are about sufficient to pay the cost of printing and postage:

Vol. 1 (1878), paper, postpaid, 50 cents.
Vols. 2 to 10 (1879 to 1887), paper, postpaid, 75 cents.
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Each member of the Association will receive, as soon as published, one copy of the proceedings for each year of his membership. A bound copy will be sent, unless the secretary is otherwise directed. Members desiring extra copies, and new members desiring back reports, will be charged the above prices. Vol. 4 is out of print, but will be reprinted shortly.

Public libraries and educational institutions will be furnished with complete sets of the reports without expense.

EDWARD OTIS HINKLEY, *Secretary*,
215 N. Charles Street, Baltimore, Md.

INDEX.

PAGE

Amendment of By-Laws, ... 13, 86
Annual Address, ... 28, 233
Annual Dinner, ... 96
Annual Meeting, Next, ... 445
Arbitration, U. S. Courts of, ... 29, 322
Bacon, A. O., Remarks of, ... 20
Bar Associations, List of Local, ... 439
Bates, George H., Remarks of, ... 38
Benedict, R. D., Remarks of, ... 19
Breaux, G. A., Remarks of, ... 29
Briefs, Exchange of, ... 82
Broadhead, Jas. O., Remarks of, ... 40
By-Laws, ... 103
By-Laws, Amendment of, ... 13, 86
Committees, List of, ... 115
Commercial Law, Reports of Committee on, ... 52, 78, 332
Constitution, ... 98
Constitutional Government, Celebration of Anniversary, ... 84
Curtis, J. B., Remarks of, ... 60
Delegates, List of, ... 9
Dillon, John F., Remarks of, ... 43
District Court Judges, Salaries of, ... 85
Edsall, James K., Paper by, ... 54, 288
Federal Code of Procedure, Report of Committee on, ... 317
Garnett, Henry Wise, Remarks of. 24
General Council, ... 109
General Minutes, ... 11
Granger Cases and the Police Power, Paper on, ... 54, 288
Grubb, Ignatius C., Remarks of, ... 73
Handy, John H., Remarks of, ... 74
Hinkley, E. O., Remarks of, ... 65
Hitchcock, Henry, Annual Address by, ... 28, 233

PAGE
Honorary Membership, ... 13
Houston, W. T., Remarks of, ... 67
Indemnity, the Essence of Insurance, Paper on, ... 18, 261
Indeterminate Sentences of Convicted Criminals, ... 19
Jackson, Henry, Paper by, ... 18, 261
Judicial Administration and Remedial Procedure, Report of Committee on, ... 51, 324, 327
Jurisprudence and Law Reform, Reports of Committee on, 28, 317, 321
King, Rufus, Remarks of, ... 22
Lancaster, C. C., Remarks of, ... 36
Legislative Intention in Framing Statutes, ... 81
Local Councils, List of, ... 111
Marriage and Divorce, ... 87
Marriage in Foreign Countries, ... 81
Members, Alphabetical List of, ... 117
Members, Elected List of, ... 92
Members, List of by States, ... 135
Members Registered, ... 5
Mynatt, P. L., Remarks of, ... 76
Notice as to Reports, ... 449
Obituaries—
F. P. Cuppy, ... 407
M. A. Daugherty, ... 425
John P. Gregory, ... 428
John H. Kennard, ... 411
Austin F. Pike, ... 414
Luke P. Poland, ... 432
William Preston, ... 408
Reuben O. Reynolds, ... 412
James H. Rion, ... 430
John M. Shirley, ... 419
Aaron J. Vanderpoel, ... 422
William D. Wetherill, ... 428
Benjamin A. Willis, ... 424
Officers, List of, ... 108
Parker, R. W., Remarks of, ... 37
Patterson, C. S., Remarks of, ... 58
Penal Colonies, Report on, ... 52, 324
Potter, O. B., Remarks of, ... 33
Practice in United States Courts, Uniformity of, Report on, . . 52, 327
President's Address, ... 11, 157
Presidents, List of, ... 97
Private Legislation, Report of Committee on, ... 55, 396
Reports, State, Sale of, ... 51, 321

PAGE

Reports of—
Secretary, ... 16
Treasurer, ... 15, 89
Sanders, W. F., Remarks of, ... 31, 42
Semmes, Thos. J., President's Address by, ... 157
Sherman, E. B., Remarks of, ... 32
Sterne, Simon, Remarks of, ... 56
Subjects Referred, List of, ... 438
Troy, D. S., Remarks of, ... 34
Vice-Presidents, List of, ... 111
Whipping-Post, ... 55
Whittaker, Egbert, Remarks of, ... 56
Wilmer, Skipwith, Remarks of, ... 62

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